

The Property of the State of
Hawaii in the official keeping of
the District Court.

Koolaupoko/Koolauloa Division

SESSION LAWS

OF

HAWAII

PASSED BY THE

TWENTY-SECOND STATE LEGISLATURE

STATE OF HAWAII

REGULAR SESSION

2004

Convened on Wednesday, January 21, 2004 and
Adjourned sine die on Thursday, May 6, 2004

Published under Authority of
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by the
Revisor of Statutes
State of Hawaii
Honolulu, Hawaii

PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 2004.

The text of the laws is printed in full except for laws repealing existing statutes. With the exception of certain obvious typographical errors which have been corrected, the text of the laws as enacted is followed.

Statutory material that is being repealed is either bracketed or bracketed and stricken. New material is indicated by underscoring. As authorized by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Ken H. Takayama
Revisor of Statutes

Honolulu, Hawaii
July 14, 2004

STATE OF HAWAII
ELECTED OFFICIALS AND LEGISLATIVE OFFICERS

UNITED STATES CONGRESS

Senate:
Daniel K. Inouye
Daniel K. Akaka

House of Representatives:
Neil Abercrombie
Ed Case

STATE EXECUTIVE OFFICERS

Governor of Hawaii Linda Lingle
Lieutenant Governor James R. Aiona, Jr.

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REGULAR SESSION
2004**

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Twenty-Fifth District—(Oahu)
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Twenty-Third District—(Oahu)
Melodie Aduja (D)

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D - Democrats	36
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2004 REGULAR SESSION**

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**Session Laws of Hawaii
Passed By The
Twenty-Second State Legislature
Regular Session
2004**

ACT 1

H.B. NO. 2585

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Legislative Auditor, the Legislative Reference Bureau, and the Ombudsman.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,256,084 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the Senate up to and including June 30, 2005, including the 2004 regular session, Twenty-second Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2004 and 2005 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,545,077 or so much thereof as may be necessary for defraying any and all session and nonsession expenses of the House of Representatives up to and including June 30, 2005, including the 2004 regular session, Twenty-second Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2004 and 2005 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 2004 and 2005 regular sessions shall be made only with the approval of the President of the Senate, and payment of expenses of the House of Representatives during the interim between the 2004 and 2005 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 19, 2005, the Senate and the House of Representatives shall each have their accounts audited and a full report of the respective audits shall be presented to the Senate and to the House of Representatives convening on January 19, 2005.

SECTION 5. The expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall not be limited by the provisions of section 78-15, Hawaii Revised Statutes, or by any other general statute. Until otherwise prescribed by law, the expenses of such member shall be \$130 a day as

ACT 1

authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,186,672 or so much thereof as may be necessary to the office of the legislative auditor for the following expenses:

- (1) The sum of \$2,318,772 for defraying the expenses of the office of the legislative auditor during fiscal year 2004-2005;
- (2) The sum of \$717,900 for defraying the expenses of the office of the state ethics commission during fiscal year 2004-2005; and
- (3) The sum of \$150,000 during fiscal year 2004-2005 for:
 - (A) Performing special studies;
 - (B) Improving capabilities for planning, programming, and budgeting;
 - (C) Fulfilling other special requests made of the legislative auditor by the Legislature or jointly by the President of the Senate and the Speaker of the House of Representatives;
 - (D) Legislative studies and contractual services for those studies; and
 - (E) Such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,013,125 or so much thereof as may be necessary to the office of the legislative auditor during fiscal year 2004-2005 to be deposited into the audit revolving fund established pursuant to section 23-3.6, Hawaii Revised Statutes.

SECTION 8. There is appropriated out of the audit revolving fund the sum of \$3,013,125 or so much thereof as may be necessary to the office of the legislative auditor during fiscal year 2004-2005 for the following expenses:

- (1) The comprehensive annual financial report of the State; and
- (2) The financial statement and single audits of:
 - (A) The department of human services, excluding the housing and community development corporation of Hawaii;
 - (B) The department of health;
 - (C) The department of education; and
 - (D) The department of transportation, specifically:
 - (i) The administration of the department;
 - (ii) The Oahu metropolitan planning organization; and
 - (iii) The airports, harbors, and highways divisions.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,573,589 or so much thereof as may be necessary to the legislative reference bureau for defraying the expenses of the legislative reference bureau during fiscal year 2004-2005, including equipment relating to computer systems programming and operations.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$813,948 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2004-2005.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the following sums or so much thereof as may be necessary for defraying the expenses of the legislative information system:

- (1) \$600,000 to the Senate; and
- (2) \$600,000 to the House of Representatives.

This appropriation shall be used to pay for hardware, software, consultant, installation, material, supply, and other related costs associated with the legislative information system that have been or will be incurred. This appropriation shall take effect upon the approval of this Act and shall not lapse until June 30, 2005.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000 or so much thereof as may be necessary for the legislative broadcast program, including the production and distribution of television broadcasts of legislative proceedings. This appropriation shall take effect upon the approval of this Act and shall be expended by the Legislature for the purposes of this section. This appropriation shall not lapse until June 30, 2005.

SECTION 13. As of the close of business on June 30, 2005, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 14. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 15. This Act shall take effect upon its approval.

(Approved February 10, 2004.)

ACT 2

H.B. NO. 1113

A Bill for an Act Relating to Drivers' Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-131, Hawaii Revised Statutes, is amended to read as follows:

“§286-131 Unlawful use of license. No person shall:

- (1) Display or permit to be displayed or have in the person's possession any canceled, revoked, [øf] suspended, fictitious, or fraudulently altered driver's license;
- (2) Lend the person's driver's license to any other person or knowingly permit the use thereof by another;
- (3) Display or represent as one's own any driver's license not issued to the person;
- (4) Fail or refuse to surrender to the examiner of drivers, upon the examiner's lawful demand, any driver's license that has been suspended, revoked, or canceled; [øf]
- (5) Use a false or fictitious name in any application for a driver's license or knowingly make a false statement or knowingly conceal a material fact, or otherwise commit a fraud in any such application; or

ACT 3

- [(5)] (6) Use or have in the person's possession any reproduction, imitation, or facsimile of any driver's license or any identification with the appearance of a driver's license."

SECTION 3.¹ Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4.¹ This Act shall take effect upon its approval.

(Approved March 31, 2004.)

Note

1. So in original.

ACT 3

H.B. NO. 2299

A Bill for an Act Relating to Appellate Court Costs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c)

PART II

The fees prescribed by this part apply without exception.

Jury trial:

- (21) Demand for jury trial, including without limitation probate cases, appeals to the circuit court, and cases transferred to the circuit court from the district court, this fee to be paid to the court in which the demand is filed by the party first making the demand \$200
- (22) Remand to district court in cases transferred to circuit court from district court on demand for jury trial, where jury trial is waived and a remand of such cases to district court is allowed \$50

Miscellaneous:

- (23) Filing of notice of appeal to supreme court, to be paid in addition to the deposit of [supreme] appellate court costs \$100
- (24) Search of records by the clerk \$2
- (25) Making of copy; comparing of copy with original; certification or authentication of notaries Fees prescribed by section 92-21
- (26) Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal \$1
- (27) Exemplification, instead of item (26) \$2
- (28) Filing of copy of notice of completion of contract, with affidavit of publication \$3
- (29) Filing of initial paper under section 507-43 by person asserting mechanic's or materialman's lien (this fee to be additional to the fee prescribed by part I for bringing an action under section 507-47) \$15
- (30) Filing of any other paper not in a pending proceeding \$3
- (31) Printing, publishing, or posting notice; service fees; garnishee fees; mileage charges; or other services actually performed Amounts necessary to cover actual costs or disbursements

- (32) For administrative costs associated with the processing of all civil filings except those brought by the State or any of the various counties or political subdivisions of the State \$50.”

SECTION 2. Section 607-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All proceedings in the courts of appeal shall be filed in the supreme court. Upon the filing of any appeal, or the institution of any original suit, action, or other proceeding in the supreme court, there shall be paid ~~[to the clerk of the supreme court]~~ by the person filing such appeal, or instituting the suit, action, or other proceeding, as appellate court costs ~~[of court]~~, the sum of \$100.”

SECTION 3. Section 607-7, Hawaii Revised Statutes, is amended to read as follows:

“§607-7 Deposit and payment of fees and costs on appeal. All fees and costs required to be paid upon the filing of ~~[any]~~ a notice of appeal from a court shall be ~~[deposited with]~~ paid to the clerk of the court from which the appeal is taken[, which deposit shall be transmitted]. The clerk of the court shall immediately transmit a record of the payments and deposits, along with a copy of the notice of appeal, to the clerk of the supreme court [together with the record of the appeal; provided that the filing fee]. The required fees and costs for an appeal, whether to be heard by the supreme court, intermediate appellate court, or both, shall be payable only once upon the initial filing of the appeal. ~~[The deposit shall be made at the time of filing the notice of appeal.]~~

Where the appeal is from a governmental official or body other than a court, the required ~~[payment of]~~ costs and fees for filing the appeal shall be made payable to the clerk of the court to which the appeal is taken [except as otherwise provided; provided that the filing fee for an appeal,] and transmitted by the government official or body upon receipt to the clerk of the court to which the appeal is taken, along with a copy of the notice of appeal. In the event that an appeal from a government official or body is taken directly to the supreme court, to be heard by the supreme court, the intermediate appellate court, or both, ~~[shall be transmitted to the clerk of the supreme court, and further provided that]~~ the [filing fee] required costs and fees for the appeal shall be payable only once, upon the initial filing of the appeal.”

SECTION 4. Section 501-63, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 607-5.5, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed and stricken.¹
New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2004.

(Approved April 15, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Transfer of Ownership of Firearms and Ammunition.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 134-7, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) No person who has been restrained pursuant to an order of any court, including an ex parte order as provided in this subsection, from contacting, threatening, or physically abusing any person, shall possess ~~[or]~~, control, or transfer ownership of any firearm or ammunition therefor, so long as the protective order, restraining order, or any extension is in effect, unless the order, for good cause shown, specifically permits the possession of a firearm and ammunition. The restraining order or order of protection shall specifically include a statement that possession ~~[or]~~, control, or transfer of ownership of a firearm or ammunition by the person named in the order is prohibited. Such person shall relinquish possession and control of any firearm and ammunition owned by that person to the police department of the appropriate county for safekeeping for the duration of the order or extension thereof. In the case of an ex parte order, the affidavit or statement under oath that forms the basis for the order shall contain a statement of the facts that support a finding that the person to be restrained owns, intends to obtain~~[-]~~ or to transfer ownership of, or possesses a firearm, and that the firearm may be used to threaten, injure, or abuse any person. The ex parte order shall be effective upon service pursuant to section 586-6. At the time of service of a restraining order involving firearms and ammunition issued by any court, the police officer may take custody of any and all firearms and ammunition in plain sight, those discovered pursuant to a consensual search, and those firearms surrendered by the person restrained. If the person restrained is the registered owner of a firearm and knows the location of the firearm, but refuses to surrender the firearm or refuses to disclose the location of the firearm, the person restrained shall be guilty of a misdemeanor. In any case, when a police officer is unable to locate the firearms and ammunition either registered under this chapter or known to the person granted protection by the court, the police officer shall apply to the court for a search warrant pursuant to chapter 803 for the limited purpose of seizing the firearm and ammunition.

For the purposes of this subsection, good cause shall not be based solely upon the consideration that the person subject to restraint pursuant to an order of any court, including an ex parte order as provided for in this subsection, is required to possess or carry firearms or ammunition during the course of ~~[their]~~ the person's employment. Good cause consideration may include~~[-]~~ but not be limited to~~[-]~~ the protection and safety of the person to whom a restraining order is granted.

(g) Any person disqualified from ownership, possession, ~~[or]~~ control, or the right to transfer ownership of firearms and ammunition under this section shall surrender or dispose of all firearms and ammunition in compliance with section 134-7.3.”

SECTION 2. Section 134-7.3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For the purposes of this section, “dispose” means selling the firearms to a gun dealer licensed under section 134-31, transferring ownership of the firearms to any person who meets the requirements of section 134-2, or surrendering all firearms to the chief of police where the person resides for storage or disposal~~[-]~~; provided, for a person subject to section 134-7(f), “dispose” shall not include

transferring ownership of the firearms to any person who meets the requirements of section 134-2."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 15, 2004.)

ACT 5

H.B. NO. 2298

A Bill for an Act Relating to Disqualification of Judges.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 601-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall sit as a judge in any case in which [the]:

- (1) The judge’s relative by affinity or consanguinity within the third degree is counsel, or interested either as a plaintiff or defendant, or in the issue of which the judge has, either directly or through such relative, [any] a more than de minimis pecuniary interest; [nor shall any person sit as a judge in any case in which the] or

- (2) The judge has been of counsel or on an appeal from any decision or judgment rendered by the judge[-];

provided that no interests held by mutual or common funds, the investment or divestment of which are not subject to the direction of the judge, shall be considered pecuniary interests for purposes of this section; and after full disclosure on the record, parties may waive disqualification due to any pecuniary interest.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 15, 2004.)

ACT 6

H.B. NO. 2251

A Bill for an Act Relating to Chapter 291E.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291E-62, Hawaii Revised Statutes, is amended to read as follows:

“§291E-62 Operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant; penalties. (a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to this section or to part III or section 291E-61, or to part VII or part XIV of chapter 286 or section

ACT 7

200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

- (1) In violation of any restrictions placed on the person's license; or
 - (2) While the person's license or privilege to operate a vehicle remains suspended or revoked.
- (b) Any person convicted of violating this section shall be sentenced as follows:
- (1) For a first offense, or any offense not preceded within a five-year period by conviction for an offense under this section[;] or under section 291-4.5 as that section was in effect on December 31, 2001:
 - (A) A term of imprisonment of not less than three consecutive days but not more than thirty days;
 - (B) A fine of not less than \$250 but not more than \$1,000; and
 - (C) Revocation of license and privilege to operate a vehicle for an additional year;
 - (2) For an offense that occurs within five years of a prior conviction for an offense under this section[;] or under section 291-4.5 as that section was in effect on December 31, 2001:
 - (A) Thirty days imprisonment;
 - (B) A \$1,000 fine; and
 - (C) Revocation of license and privilege to operate a vehicle for an additional two years; and
 - (3) For an offense that occurs within five years of two or more prior convictions for offenses under this section[;] or under section 291-4.5 as that section was in effect on December 31, 2001:
 - (A) One year imprisonment;
 - (B) A \$2,000 fine; and
 - (C) Permanent revocation of the person's license and privilege to operate a vehicle.

The period of revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 16, 2004.)

ACT 7

S.B. NO. 3172

A Bill for an Act Relating to Pest Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 460J-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew any license issued hereunder, for any cause authorized by law, including but not limited to the following:

- (1) Departure from, or disregard of, plans or specifications in the performance of pest control work in any material respect, without consent of the owner or the owner's authorized representative;
- (2) Violation of any law or rule of the State or any county relating to building, pesticide use, safety, or labor, where the law or rule has a rational relationship to the qualifications, functions, duties, or responsibilities of the pest control operator, including but not limited to a violation of [any applicable law or rule of the departments of agriculture, health, or labor and industrial relations;] the Hawaii pesticides law;
- (3) Misrepresentation of a material fact by the applicant in obtaining a license;
- (4) Failure on the part of a licensee to complete any operation [~~or construction repairs~~] for the price stated in the contract [~~for the operation or construction repairs~~] or in any agreed upon modification [~~of~~] to the contract;
- (5) Failure to comply with this chapter, or any rule adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for termites;
- (6) The commission of any grossly negligent or fraudulent act by the licensee as an operator;
- (7) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (8) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work relating to any infestation or infection of termites found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by termites whether or not a report was made pursuant to sections 460J-19 and 460J-20;
- (9) Failure of an operator to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than two years after completion of any work or operation for the control of termites;
- (10) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the operator's operations as an operator when the operator has the ability to pay or when the operator has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (11) The false denial of any debt due or the validity of the claim therefor with intent to secure for the licensee, the licensee's employer, or other person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (12) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386, or when not excluded from the requirements of chapter 386; or
- (13) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter[; ~~or~~
- (14) ~~Conviction of any offense described in chapter 708 committed while in the performance of the person's regular occupation as a pest control operator]."~~

ACT 8

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 19, 2004.)

ACT 8

S.B. NO. 2902

A Bill for an Act Relating to Telemarketing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to harmonize Hawaii's telemarketing law with the new Do-Not-Call provisions of the Telemarketing Sales Rule and the Telephone Consumer Protection Act as administered by the Federal Trade Commission and the Federal Communications Commission by providing that a violation of the federal Do-Not-Call provisions constitutes an unfair or deceptive trade practice under Hawaii law.

SECTION 2. Section 481P-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It is an unfair or deceptive act or practice and a violation of this chapter for any seller or telephone solicitor to:

- (1) Fail to commence, within the first minute of an outbound telephone call, and complete within the first three minutes of the outbound call, and before payment is requested and prior to any solicitation, disclosure of the following:
 - (A) The true purpose of the telephone call;
 - (B) The telephone solicitor's name and the company or entity on whose behalf the solicitation is being made; and
 - (C) The goods or services being offered;
- (2) Misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment is received from the consumer, the following information:
 - (A) Total purchase costs to the consumer of the goods or services to be received;
 - (B) Any restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of any offer;
 - (C) Any material term or condition of the seller's refund, cancellation, or exchange policy, including, if applicable, that no such policies exists¹;
 - (D) All material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the “no purchase” method of entering the contest;
 - (E) Any material aspect of an investment opportunity being offered, including but not limited to risk, liquidity, earnings potential, market value, and profitability; and
 - (F) The quantity, and any material aspect of the quality or basic characteristics of any goods or services offered;

- (3) Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered;
- (4) Represent that the telephone solicitor or seller is registered as a telephone solicitor in the State or has in any way received an endorsement or approval by any governmental agency of the State;
- (5) Make a false or misleading statement with the purpose of inducing a consumer to pay for any goods or services;
- (6) Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization; provided that no express verifiable authorization is required if the seller adopts and complies with a policy that:
 - (A) Affords the consumer at least seven days after the receipt of goods or services to review goods or services and return undamaged or unused goods or submit a cancellation of services notice;
 - (B) Requires the seller to process the full refund within thirty days after receipt of returned merchandise or the cancellation of services notice from the consumer; and
 - (C) Requires the disclosure of the seller's return and refund policy to the consumer, orally by telephone, and in writing with any advertising or promotional material, and with delivery of the goods or services;
- (7) Fail to include on the express verifiable authorization in a clear and conspicuous manner, the following language:
 "YOU ARE NOT OBLIGATED TO MAKE ANY PAYMENT UNLESS YOU SIGN THIS CONFIRMATION AND RETURN IT TO THE SELLER.";
- (8) Procure the services of any professional delivery, courier, or other pick-up service to obtain immediate receipt or possession of a consumer's payment;
- (9) Offer to consumers in the State any prize promotion, in which a purchase or payment is necessary to obtain the prize; [ø]
- (10) Fail to comply with the recordkeeping requirements of this chapter[:];
 or
- (11) Initiate or cause to be initiated, a telephone solicitation call to a telephone number that is listed on the national Do-Not-Call registry administered by the Federal Trade Commission and the Federal Communications Commission pursuant to and in violation of the Telemarketing Sales Rule, 16 C.F.R. part 310, and the Telephone Consumer Protection Act, 47 C.F.R. parts 64 and 68."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 19, 2004.)

Note

- 1. Prior to amendment "exist" appeared here.

A Bill for an Act Relating to the Hawaii Tourism Authority.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 201B-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) Except as otherwise limited by this chapter, the authority may:
- (1) Sue and be sued;
 - (2) Have a seal and alter the same at pleasure;
 - (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter; provided that the authority may enter into contracts and agreements for a period of up to five years, subject to the availability of funds; and provided further that the authority may enter into agreements for the use of the convention center facility for a period of up to ten years;
 - (4) Make and alter bylaws for its organization and internal management;
 - (5) Unless otherwise provided in this chapter, adopt rules in accordance with chapter 91 with respect to its projects, operations, properties, and facilities;
 - (6) Through its executive director represent the authority in communications with the governor and with the legislature;
 - (7) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 78;
 - (8) Through its executive director purchase supplies, equipment, or furniture;
 - (9) Through its executive director allocate the space or spaces which are to be occupied by the authority and appropriate staff;
 - (10) Engage the services of qualified persons to implement the State’s tourism marketing plan or portions thereof as determined by the authority;
 - (11) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
 - (12) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
 - (13) Contract for or accept revenues, compensation, proceeds, and gifts or grants in any form from any public agency or any other source, including any revenues or proceeds arising from the operation or use of the convention center;
 - ~~[(14) Create a vision and develop a long range plan for tourism in Hawaii;~~
 - ~~[(15)]~~ (14) Develop, coordinate, and implement state policies and directions for tourism and related activities taking into account the economic, social, and physical impacts of tourism on the State and its natural resources infrastructure; provided that the authority shall support the efforts of other state and county departments or agencies to manage, improve, and protect Hawaii’s natural environment and areas frequented by visitors;
 - ~~[(16) Develop and implement the state tourism strategic marketing plan, which shall be updated every three years, to promote and market the State as a desirable leisure and business visitor destination;~~
 - (17) (15) Have a permanent, strong focus on marketing and promotion;

- [(18)] (16) Conduct market development-related research as necessary;
 - [(19)] (17) Coordinate all agencies and advise the private sector in the development of tourism-related activities and resources;
 - [(20)] (18) Work to eliminate or reduce barriers to travel in order to provide a positive and competitive business environment, including coordinating with the department of transportation on issues affecting airlines and air route development;
 - [(21)] (19) Market and promote sports-related activities and events;
 - [(22)] (20) Coordinate the development of new products with the counties and other public sectors and private sectors, including the development of sports, culture, health[,], and wellness, education, [business,] technology, agriculture, and [eco-tourism,] nature tourism;
 - [(23)] (21) Establish a public information and educational program to inform the public of tourism and tourism-related problems;
 - [(24)] (22) Encourage the development of tourism educational, training, and career counseling programs;
 - [(25)] (23) Establish a program to monitor, investigate, and respond to complaints about problems resulting directly or indirectly from the tourism industry and taking appropriate action as necessary;
 - [(26)] (24) Set and collect rents, fees, charges, or other payments for the lease, use, occupancy, or disposition of the convention center facility without regard to chapter 91;
 - [(27)] (25) Notwithstanding the provisions of chapter 171, acquire, lease as lessee or lessor, own, rent, hold, and dispose of the convention center facility in the exercise of its powers and the performance of its duties under this chapter; and
 - [(28)] (26) Acquire by purchase, lease, or otherwise, and develop, construct, operate, own, manage, repair, reconstruct, enlarge, or otherwise effectuate, either directly or through developers, a convention center facility.
- (b) The authority shall be responsible for:
- (1) Promoting, marketing, and developing the tourism industry in the State;
 - (2) Arranging for the conduct of research through contractual services with the University of Hawaii or any agency or other qualified persons concerning social, economic, and environmental aspects of tourism development in the State;
 - (3) Providing technical or other assistance to agencies and private industry upon request;
 - (4) ~~Developing and implementing the state tourism marketing plan; and~~
Creating a vision and developing a long-range strategic plan for tourism in Hawaii; and
 - (5) Reviewing annually the expenditure of public funds by any visitor industry organization with which the authority contracts to perform tourism promotion, marketing, and development and making recommendations necessary to ensure the effective use of the funds for the development of tourism. The authority shall also prepare annually a report of expenditures, including descriptions and evaluations of programs funded, together with any recommendations the authority may make and shall submit the report to the governor and the legislature as part of the annual report required under section 201B-16."

SECTION 2. Section 201B-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The authority shall be responsible for developing a [strategie] tourism marketing plan that shall be updated every [three years] year and includes the following:

ACT 10

- ~~[(1) Identification and evaluation of current and future tourism needs for the different regions of the State;~~
- ~~(2) Goals and objectives in accordance with identified needs;~~
- ~~(3) (1) Statewide promotional efforts and programs;~~
- ~~[(4)]¹ (2) Targeted markets;~~
- ~~[(5)] (3) Efforts to enter into brand marketing projects that make effective use of cooperative advertising programs;~~
- ~~[(6)] (4) Measures of effectiveness for the authority's promotional programs; and~~
- ~~[(7)] (5) Coordination of marketing plans of all destination marketing organizations receiving state funding prior to finalization of the authority's marketing plan.~~

~~[The authority shall also develop and include in its marketing plan, goals and objectives for marketing the State to the techno-tourism niche as well as for integrating marketing objectives with existing and potential state telecommunications and information resources in the public and private sectors. The authority shall also coordinate the requirements for and availability of the State's existing and potential telecommunications and information resources with the department of accounting and general services.]”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 19, 2004.)

Note

- 1. So in original.

ACT 10

S.B. NO. 2278

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 39A-256, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~39A-256~~] Issuance of special purpose revenue bonds to finance projects.~~ In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance the costs of facilities of or for project parties or to loan the proceeds of such bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds, and the provisions of part III of chapter 39 shall not apply. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include the following: financing charges, fees, the expenses of trustees, and the cost of paying agents to issue special purpose revenue bonds to fund the project; interest on the

bonds and the expenses of the State in connection with the bonds and the project to be financed or refinanced from the proceeds of the bonds accruing or incurred prior to and during the period of construction, not to exceed twelve months thereafter; amounts necessary to establish or increase reserves for the special purpose revenue bonds; the cost of plans, specifications, studies, surveys, and estimates of costs and of revenues; other expenses incidental to determining the feasibility or practicability of the project; administration expenses; the cost of interest incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; fees and expenses incurred in connection with the refinancing of outstanding obligations; other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, or extension of the project; the financing or refinancing of the project and placing the project in operation; and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public and that the issuance of special purpose revenue bonds to finance or refinance facilities of or for project parties or to loan the proceeds of the bonds to assist project parties is in the public interest. The legislature also finds and determines that the exercise of the powers vested in the department by this part are pursuant to separate acts of the legislature, each of which shall be enacted in a nondiscriminatory manner on the basis of neutral, secular criteria and will not in any manner violate the First Amendment of the Constitution of the United States or article I, section [1]4[1], of the Constitution of the State of Hawaii.”

SECTION 2. Section 88-103.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The employees’ retirement system shall:

- (1) Disclose to the [~~Hawaii public employees health fund~~] Hawaii employer-union health benefits trust fund and employee organizations information related to the administration of pension, annuity, or retirement allowance deductions, as follows: name, social security number, and amounts and dates of both voluntary and mandatory deductions remitted to the recipient; and
- (2) Release the records of its retirants and beneficiaries to the [~~Hawaii public employees health fund~~] Hawaii employer-union health benefits trust fund for the disbursement of payments authorized under section [87-27.] 87A-23.”

SECTION 3. Section 88D-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The employer shall reimburse employees under the age of fifty-five who elect a withdrawal [1]of[1] their entire account balance from the special pay plan within sixty days from the date that the employee separated from service, an amount equal to the difference between the FICA and medicare tax savings to the employee, and any early withdrawal penalty imposed by the Internal Revenue Service.”

SECTION 4. Section 89-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The employer and the exclusive representative shall meet at reasonable times, including meetings sufficiently in advance of the [~~April 16~~] February 1 impasse date under section 89-11, and shall negotiate in good faith with respect to wages, hours, the amounts of contributions by the State and respective counties to

the ~~[Hawaii public employees health fund]~~ Hawaii employer-union health benefits trust fund to the extent allowed in subsection (e), and other terms and conditions of employment which are subject to collective bargaining and which are to be embodied in a written agreement as specified in section 89-10, but such obligation does not compel either party to agree to a proposal or make a concession; provided that the parties may not negotiate with respect to cost items as defined by section 89-2 for the biennium 1999 to 2001, and the cost items of employees in bargaining units under section 89-6 in effect on June 30, 1999, shall remain in effect until July 1, 2001.”

2. By amending subsections (d) and (e) to read:

“(d) Excluded from the subjects of negotiations are matters of classification, reclassification, benefits of but not contributions to the ~~[Hawaii public employees health fund,]~~ Hawaii employer-union health benefits trust fund, recruitment, examination, initial pricing, and retirement benefits except as provided in section 88-8(h). The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1 or which would interfere with the rights and obligations of a public employer to:

- (1) Direct employees;
- (2) Determine qualifications, standards for work, and the nature and contents of examinations;
- (3) Hire, promote, transfer, assign, and retain employees in positions;
- (4) Suspend, demote, discharge, or take other disciplinary action against employees for proper cause;
- (5) Relieve an employee from duties because of lack of work or other legitimate reason;
- (6) Maintain efficiency and productivity, including maximizing the use of advanced technology, in government operations;
- (7) Determine methods, means, and personnel by which the employer’s operations are to be conducted; and
- (8) Take such actions as may be necessary to carry out the missions of the employer in cases of emergencies.

The employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit; the suspension, demotion, discharge, or other disciplinary actions taken against employees within the bargaining unit; and the layoff of employees within the bargaining unit. Violations of the procedures so negotiated may be subject to the grievance procedure in the collective bargaining agreement.

(e) Negotiations relating to contributions to the ~~[Hawaii public employees health fund]~~ Hawaii employer-union health benefits trust fund shall be for the purpose of agreeing upon the amounts which the State and counties shall contribute under section 87-4, toward the payment of the costs for a health benefits plan, as defined in section 87-1(8), and group life insurance benefits, and the parties shall not be bound by the amounts contributed under prior agreements; provided that section 89-11 for the resolution of disputes by way of arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the ~~[Hawaii public employees health fund,]~~ Hawaii employer-union health benefits trust fund.”

SECTION 5. Section 89-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

“(d) If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (5), teachers and other personnel of the department

of education; or bargaining unit (7), faculty of the University of Hawaii and the community college system, the board shall assist in the resolution of the impasse as follows:

- (1) Voluntary mediation. During the first twenty days of the date of impasse, either party may request the board to assist in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public from a list of qualified persons maintained by the board;
- (2) Mediation. If the impasse continues more than twenty days, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse. The board may compel the parties to attend mediation, reasonable in time and frequency, until the fiftieth day of impasse. Thereafter, mediation shall be elective with the parties, subject to the approval of the board;
- (3) Report of the board. The board shall promptly report to the appropriate legislative body or bodies the following circumstances as each occurs:
 - (A) The date of a tentative agreement and whether the terms thereof are confidential between the parties;
 - (B) The ratification or failure [{}of{}] ratification of a tentative agreement;
 - (C) The signing of a tentative agreement;
 - (D) The terms of a tentative agreement; or
 - (E) On or about the fiftieth day of impasse, the failure of mediation. The parties shall provide the board with the requisite information; and
- (4) After the fiftieth day of impasse, the parties may resort to such other remedies that are not prohibited by any agreement pending between them, other provisions of this chapter, or any other law."

2. By amending subsection (g) to read:

"(g) The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the ~~[Hawaii public employees health fund]~~ Hawaii employer-union health benefits trust fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the ~~[Hawaii public employees health fund]~~ Hawaii employer-union health benefits trust fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the ~~[Hawaii public employees health fund.]~~ Hawaii employer-union health benefits trust fund. The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the [~~Hawaii public employees health fund,~~] Hawaii employer-union health benefits trust fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.”

SECTION 6. Section 195D-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) (1) Except as otherwise provided by law, the board, upon recommendation from the department, in cooperation with other state, federal, county, or private organizations and landowners, after a public hearing on the island affected, and upon an affirmative vote of not less than two-thirds of its authorized membership, may enter into a habitat conservation plan, if it determines that:
- [(1)] (A) The plan will further the purposes of this chapter by protecting, maintaining, restoring, or enhancing identified ecosystems, natural communities, or habitat types upon which endangered, threatened, proposed, or candidate species depend within the area covered by the plan;
 - [(2)] (B) The plan will increase the likelihood of recovery of the endangered or threatened species that are the focus of the plan; and
 - [(3)] (C) The plan satisfies all the requirements of this chapter.
- In the event the board votes to enter into a habitat conservation plan for which the majority of the endangered species recovery committee recommended disapproval, the board may not enter into the habitat conservation plan unless the plan is approved by a two-thirds majority vote of both houses of the legislature. Habitat conservation plans may allow conservation rental agreements, habitat banking, and direct payments. Any habitat conservation plan approved pursuant to this section shall be based on the best available scientific and other reliable data available at the time the plan is approved.
- (2) Each habitat conservation plan shall:
- [(1)] (A) Identify the geographic area encompassed by the plan; the ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan; and the endangered, threatened, proposed, and candidate species known or reasonably expected to be present in those ecosystems, natural communities, or habitat types in the plan area;
 - [(2)] (B) Describe the activities contemplated to be undertaken within the plan area with sufficient detail to allow the department to evaluate the impact of the activities on the particular ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan;
 - [(3)] (C) Identify the steps that will be taken to minimize and mitigate all negative impacts, including without limitation the impact of any authorized incidental take, with consideration of the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed; and the funding that will be available to implement those steps;

- [(4)] (D) Identify those measures or actions to be undertaken to protect, maintain, restore, or enhance the ecosystems, natural communities, or habitat types within the plan area; a schedule for implementation of the measures or actions; and an adequate funding source to ensure that the actions or measures, including monitoring, are undertaken in accordance with the schedule;
- [(5)] (E) Be consistent with the goals and objectives of any approved recovery plan for any endangered species or threatened species known or reasonably expected to occur in the ecosystems, natural communities, or habitat types in the plan area;
- [(6)] (F) Provide reasonable certainty that the ecosystems, natural communities, or habitat types will be maintained in the plan area, throughout the life of the plan, in sufficient quality, distribution, and extent to support within the plan area those species typically associated with the ecosystems, natural communities, or habitat types, including any endangered, threatened, proposed, and candidate species known or reasonably expected to be present in the ecosystems, natural communities, or habitat types within the plan area;
- [(7)] (G) Contain objective, measurable goals, the achievement of which will contribute significantly to the protection, maintenance, restoration, or enhancement of the ecosystems, natural communities, or habitat types; time frames within which the goals are to be achieved; provisions for monitoring (such as field sampling techniques), including periodic monitoring by representatives of the department or the endangered species recovery committee, or both; and provisions for evaluating progress in achieving the goals quantitatively and qualitatively; and
- [(8)] (H) Provide for an adaptive management strategy that specifies the actions to be taken periodically if the plan is not achieving its goals.”

SECTION 7. Section 201B-2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The board shall appoint an executive director, exempt from chapters 76 and [78,] 88, who shall oversee the authority staff; provided that the compensation package, including salary, shall not exceed fifteen per cent of the 3.5 per cent authorized for administrative expenses under section 201B-11(c); and provided further that the compensation package shall not include private sector moneys or other contributions. The board shall set the executive director’s duties, responsibilities, holidays, vacations, leaves, hours of work, and working conditions. It may grant such other benefits as it deems necessary.”

SECTION 8. Section 302A-482, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other law to the contrary, a caregiver may consent on behalf of a minor to enrollment in school and to full participation in curricular and co-curricular school activities, if the caregiver possesses and presents to the department of education for inclusion in the minor’s file a valid affidavit for caregiver consent provided by the department of education and executed by the caregiver that shall include but not be limited to the following:

- (1) The caregiver’s name and current home address;
- (2) The birthdate of the caregiver;

- (3) The number of the caregiver's Hawaii driver's license or state identification card;
- (4) The relationship of the caregiver to the minor;
- (5) The name of the minor;
- (6) The birthdate of the minor;
- (7) The length of time the minor has resided with the caregiver;
- (8) The signature of the caregiver;
- (9) The signature of consent by the minor's parent, guardian, or legal custodian; provided that the signature of the minor's parent, guardian, or legal custodian shall not be necessary if the affidavit states that the caregiver has been unable to obtain the signature of the minor's parent, guardian, or legal custodian; and included a statement by the caregiver documenting the attempts to obtain the signature of the minor's parents, guardian, or legal custodian[-];
- (10) The minor's residency with the caregiver is not for the purpose of:
 - (A) Attending a particular school;
 - (B) Circumventing the department of education's district exemption process;
 - (C) Participating in athletics at a particular school; or
 - (D) Taking advantage of special services or programs offered at a particular school;
- (11) Notice has been provided by the caregiver to the child protective services unit of the department of [{}human services{}] if the minor covered by this affidavit is residing with the caregiver due to abuse or neglect perpetuated by the minor's parent;
- (12) The following statement:
 "General Notices:

This declaration does not affect the rights of the minor's parent, guardian, or legal custodian regarding the care, custody, and control of the minor, and does not give the caregiver legal custody of the minor.

The minor's parent or legal custodian may at any time rescind this affidavit by informing the minor's school principal in writing that the minor is attending school under the authority of this affidavit and that this affidavit has been rescinded.

A person who relies on this affidavit has no obligation to conduct any further inquiry or investigation.

No person who relies in good faith on this affidavit shall be subject to civil or criminal liability or to professional disciplinary action because of that reliance."''

SECTION 9. Section 302A-805, Hawaii Revised Statutes, is amended to read as follows:

"§302A-805 Teachers; license [or credential] required; renewals. [(a) Beginning with the 1997-1998 school year, no person shall serve as a teacher in a public school without first having obtained a license or credential from the department under this subpart. All licenses issued by the department shall be renewable every five years, if the licensee continues to satisfy the board's licensing standards. All credentials issued by the department shall be renewable every year, up to a maximum of three years, if the credential holder continues to satisfy the board's credentialing standards and actively pursues appropriate licensing. For the 2000-2001 and 2001-2002 school years only, the board may, on a case-by-case basis, extend a credential for one year, but no more than twice for any credential holder;

provided that the individual seeking an extension meets the following requirements and submits a written request to the board consisting of:

- (1) Copies of the department's form C with supporting documents that demonstrate active pursuit of and satisfactory progression in license requirements;
- (2) Documentation of extenuating circumstances that explain the need for an extension or lack of availability of programs and courses required for licensing;
- (3) Narrative evaluation from current and past school principals documenting teaching performance according to the board's performance standards;
- (4) Submittal of the credential holder's proposed action plan to meet all licensing standards;
- (5) Documentation of passing scores for basic skills tests or documented evidence, which the individual maintains, of concerted effort to pass the basic skills test, beyond mere retaking of the test; and
- (6) Documentation of passing scores for applicable subject matter content tests unless the subject matter is integrated into the teacher preparation program.

~~This subsection shall be repealed on June 30, 2002.~~

~~(b) The board shall consider the following in granting any extension:~~

- ~~(1) The diligence with which the credential holder has pursued licensing;~~
- ~~(2) The extenuating circumstances and the extent to which the individual has been subjected to constraints beyond the individual's control to the timely completion of all licensing requirements;~~
- ~~(3) Evidence of strong teaching performance according to the board's performance standards; and~~
- ~~(4) Likelihood of successful implementation of the credential holder's proposed action plan.~~

~~This subsection shall be repealed on June 30, 2002.~~

(e) Beginning July 1, 2002, all new licenses shall be issued by the board. No person shall serve as a half-time or full-time teacher in a public school without first having obtained a license from the board under this subpart. All licenses issued by the board shall be valid only for the fields specified on the licenses and shall be renewable every five years if the individual continues to:

- (1) Satisfy the board's licensing standards;
- (2) Show evidence of successful teaching in the previous five years; and
- (3) Satisfy the board's requirements for renewal of licenses.

Teachers whose licenses expire on June 30, 2002, or June 30, 2003, shall be granted an automatic extension of two years. No person shall be issued a license or teach on an emergency basis in the public schools without having first paid the fees established by the board in accordance with chapter 91."

SECTION 10. Section 662-15, Hawaii Revised Statutes, is amended to read as follows:

"§662-15 Exceptions. This chapter shall not apply to:

- (1) Any claim based upon an act or omission of an employee of the State, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved has been abused;

- (2) Any claim arising in respect of the assessment or collection of any tax, or the detention of any goods or merchandise by law enforcement officers;
- (3) Any claim for which a remedy is provided elsewhere in the laws of the State;
- (4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;
- (5) Any claim arising out of the combatant activities of the Hawaii national guard and Hawaii state defense force during time of war, or during the times the Hawaii national guard is engaged in federal service pursuant to [sections] section 316, 502, 503, 504, 505, or 709 of Title 32 of the United States Code;
- (6) Any claim arising in a foreign country; or
- (7) Any claim arising out of the acts or omissions of any boating enforcement officer[~~;~~ ~~or~~];
- (8) ~~Any claim arising out of a year 2000 error produced, calculated, or generated by a government computer system or other computer-based system, regardless of the cause for the year 2000 error.~~

~~“Computer-based system” includes any computer or other information technology system, and any electronic device that controls, operates, monitors, or assists in the operation or functioning of equipment, machinery, plant, or a device using an embedded or installed microprocessor or chip.~~

~~“Government computer system” means a computer-based system owned or operated by or on behalf of the State, its political subdivisions, or a board.~~

~~“Year 2000 error” is the failure of a computer-based system to accurately store, display, transmit, receive, process, calculate, compare, or sequence date and time data from, into, or between the twentieth and twenty-first centuries, the years 1999 and 2000 and beyond, and leap year calculations].”~~

SECTION 11. Section 706-649, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~706-649~~(1)~~] Probation services special fund. (1) There is established in the state treasury a special fund to be known as the probation services special fund. All probation services fees collected under section 706-648 shall be deposited into this fund.

(2) Moneys in the probation services special fund shall be used by the judiciary to monitor, enforce, and collect fees, fines, restitution, other monetary obligations owed by defendants, and other terms and conditions of probation.

~~[(3) The probation services special fund shall be exempt from transfers for central service expenses pursuant to section 36-27, and reimbursements for departmental administration expenses pursuant to section 36-30.]”~~

SECTION 12. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

~~“(b) Criminal history record checks may be conducted by:~~

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;

- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division, as provided by section 321-171.5;
- (3) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by [{}section{}] 302A-601.5;
- (4) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (5) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (6) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (7) The department of human services on prospective adoptive parents as established under [{}section 346-19.7[{}];
- (8) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section [{}346-154[{}];
- (9) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section [{}346-152.5[{}];
- (10) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-E;
- (11) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (12) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (13) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (14) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (15) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (16) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (17) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that

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are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7; and

- (18) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.

(c) The applicant or employee subject to a criminal ~~[]~~history~~[]~~ record check shall provide to the requesting agency:

- (1) Consent to obtain the applicant's or employee's fingerprints and conduct the criminal history record check;
- (2) Identifying information required by the Federal Bureau of Investigation which shall include but not be limited to name, date of birth, height, weight, eye color, hair color, gender, race, and place of birth; and
- (3) A statement indicating whether the applicant or employee has ever been convicted of a crime."

SECTION 13. Act 24, Session Laws of Hawaii 2000, is amended by amending section 15 to read as follows:

"SECTION 15. This Act shall take effect upon its approval[-]; provided that the amendments made to section 431:10C-103, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2003, pursuant to section 15 of Act 137, Session Laws of Hawaii 1999."

SECTION 14. Act 66, Session Laws of Hawaii 2000, is amended by amending section 3 to read as follows:

"SECTION 3. This Act shall take effect upon its approval[-]; provided that the amendment made to section 431:10C-103, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2003, pursuant to section 15 of Act 137, Session Laws of Hawaii 1999."

SECTION 15. Act 62, Session Laws of Hawaii 2003, is amended by amending section 1 to read as follows:

"SECTION 1. Act 1, Second Special Session Laws of Hawaii 2001, as amended by Session Laws of Hawaii 2002, Act 36, section 3, is amended by amending section 7 to read as follows:

~~"SECTION 7. This Act shall take effect upon its approval [and shall be repealed on June 30, 2003; provided that:~~

- ~~(1) Section 707-730(1), Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act; and~~
- ~~(2) Section 707-732(1), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act, as further amended by section 2 of Act 36, Session Laws of Hawaii 2002]."~~

SECTION 16. Act 85, Session Laws of Hawaii 2003, is amended by amending section 12 to read as follows:

"SECTION 12. This Act shall take effect upon its approval and, except for sections 9 and 10, shall be repealed on July 1, 2008."

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval, provided that:

- (1) Section 3 shall take effect December 31, 2004;
- (2) Section 7 shall take effect retroactive to April 1, 2003;
- (3) Section 13 shall take effect retroactive to April 19, 2000;
- (4) Section 14 shall take effect retroactive to April 27, 2000;
- (5) Section 15 shall take effect retroactive to June 29, 2003; and
- (6) Section 16 shall take effect retroactive to May 23, 2003.

(Approved April 19, 2004.)

ACT 11

H.B. NO. 2418

A Bill for an Act Relating to Abandoned Applications for Professional and Vocational Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 436B-9, Hawaii Revised Statutes, is amended to read as follows:

“§436B-9 Action on applications[.]; abandoned applications. (a) Unless otherwise provided by law, each licensing authority shall take the following actions within one year after the filing of a complete application for licensure:

- (1) If it deems appropriate, conduct an investigation of the applicant; and
- (2) Notify the applicant in writing by mail of the decision regarding the application for licensure. If the application has been denied, written notice of the decision shall state specifically the reason for denying the application and shall inform the applicant of the right to a hearing under chapter 91.

(b) An application shall be considered to be abandoned if ~~[it is not completed and] an applicant fails to provide evidence of continued efforts to complete the licensing process for two consecutive years; provided that the failure to provide evidence of continued efforts includes but is not limited to:~~

- (1) ~~Failure to submit the required documents and other information [are not submitted to the department] requested by the licensing authority within two consecutive years from the last date the documents or other information were requested; or~~
- (2) ~~Failure to provide the licensing authority with any written communication during two consecutive years indicating that the applicant is attempting to complete the licensing process, including but not limited to attempting to complete the examination requirement; and~~

~~provided further that the licensing authority may extend [this] the above time [period] periods by rule. The licensing authority shall not be required to act on any abandoned application, and the application may be destroyed by the licensing authority or its delegate. If the application is deemed abandoned by the licensing authority, the applicant shall be required to reapply for licensure and comply with the licensing requirements in effect at the time of reapplication.”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2004.)

ACT 12

ACT 12

H.B. NO. 2417

A Bill for an Act Relating to Real Estate Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 467, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§467- **License recognition.** The commission may enter into a license recognition agreement with another state, or a jurisdiction recognized by the Association of Real Estate License Law Officials, with an equivalent real estate licensing law as determined by the commission.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 13

H.B. NO. 2423

A Bill for an Act Relating to Cosmetology License Restoration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 439-15, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Failure or refusal to renew the license by December 31 of each odd-numbered year shall constitute a forfeiture of the license. The license shall be restored upon payment of all delinquent fees and a penalty fee if application is made within three years after lapse[-]; provided that the board may consider restoration beyond this period as prescribed by rules of the board.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2004.)

ACT 14

H.B. NO. 1737

A Bill for an Act Relating to Mortgage Brokers and Solicitors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 454-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (f) to read:

“(f) If the mortgage broker is a person other than an individual, the license issued to it entitles one officer or member thereof, on behalf of the corporation, partnership, association, or other organization, to engage in the business of mortgage broker. The officer or member shall be designated in the application for license and have two years of experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience as determined by the commissioner. For the purposes of this subsection, the commissioner shall consider as equivalent experience, two years of experience as a licensed insurance producer under chapter 431; provided that:

- (1) The licensed insurance producer only arranges mortgage loans with one insured depository institution, as defined in 12 U.S.C. section 1813(c)(2), that is a wholly-owned subsidiary of an insurer, or an affiliate of an insurer with which such insurance producer has an exclusive insurance agency relationship;
- (2) The licensed insurance producer and the insured depository institution shall certify that the insurance producer only arranges mortgage loans with the insured depository institution and no other; and
- (3) The license shall be terminated as of the date the insurance producer ceases to arrange mortgage loans with the insured depository institution.”

2. By amending subsection (i) to read:

“(i) Every licensed mortgage broker shall have and maintain a principal place of business in the State for the transaction of business. In the event the mortgage broker maintains a branch office or offices, the commissioner, upon application and payment of a fee, shall issue a branch office license. The mortgage broker shall designate a mortgage solicitor who has two years of experience in financial transactions involving primary or subordinate mortgage financing, or equivalent experience as determined by the commissioner, to be in charge of each branch office. For the purposes of this subsection, the commissioner shall consider as equivalent experience, two years of experience as a licensed insurance producer under chapter 431; provided that:

- (1) The licensed insurance producer only arranges mortgage loans with one insured depository institution, as defined in 12 U.S.C. section 1813(c)(2), that is a wholly-owned subsidiary of an insurer, or an affiliate of an insurer with which such insurance producer has an exclusive insurance agency relationship;
- (2) The licensed insurance producer and the insured depository institution shall certify that the insurance producer only arranges mortgage loans with the insured depository institution and no other; and
- (3) The license shall be terminated as of the date the insurance producer ceases to arrange mortgage loans with the insured depository institution.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 2004.)

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10D-107, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The minimum values as specified in subsections (e), (f), (g), (h), and (j) of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection.

- (1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at a rate of interest of three per cent per annum of percentages of the net considerations paid prior to that time, decreased by the sum of:
 - (A) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent per annum; and
 - (B) The amount of any indebtedness to the company on the contract, including interest due and accrued and increased by any existing additional amounts credited by the insurer to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent of the net consideration for the first contract year and eighty-seven and one-half per cent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per cent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per cent.
- (2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:
 - (A) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent of the net consideration for the first contract year plus twenty-two and one-half per cent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years[-]; and
 - (B) The annual contract charge shall be the lesser of \$30 or ten per cent of the gross annual consideration.
- (3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to

ninety per cent and the net consideration shall be the gross consideration less a contract charge of \$75.

Notwithstanding any other provision of this section, for any contract issued after June 30, 2002, and before July 1, ~~[2004,]~~ 2006, the interest rate at which net considerations, prior withdrawals, and partial surrenders shall be accumulated, for the purpose of determining minimum nonforfeiture amounts, shall be one and one-half per cent."

SECTION 2. Section 431:10D-107, Hawaii Revised Statutes, is amended to read as follows:

"§431:10D-107 Standard nonforfeiture law; individual deferred annuities. (a) This section shall be known as the Standard Nonforfeiture Law for Individual Deferred Annuities.

(b) This section shall not apply to:

- (1) Any reinsurance;
- (2) Group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code~~[-]; as amended;~~
- (3) Any premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity; or
- (4) Any contract which shall be delivered outside this State through a producer or other representative of the insurer issuing the contract.

(c) In the case of contracts issued on or after ~~[June 1, 1981,]~~ July 1, 2006, no contract of annuity, except as stated in subsection (b), shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder upon cessation of payment of considerations under the contract~~[-];~~

- (1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the insurer will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections ~~[(e), (f),]~~ (g), (h), ~~[and]~~ (i), (j)~~[-],~~ and (l);
- (2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit of the amount as specified in subsections ~~[(e), (f),]~~ (g), (h), ~~[and]~~ (j)~~[-],~~ and (l). The insurer shall reserve the right to defer the payment of the cash surrender benefit for a period ~~[of]~~ not exceeding six months after demand therefor with surrender of the contract~~[-]~~ after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral;
- (3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits~~[-]; and~~

- (4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered, and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the [company] insurer on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid ~~[prior to the period]~~ would be less than \$20 monthly, the [company] insurer may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by the payment shall be relieved of any further obligation under the contract.

(d) The minimum values as specified in subsections ~~[(e), (f),]~~ (g), (h), ~~[and]~~ (i), (j), and (l), of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subsection.

- (1) ~~With respect to contracts providing for flexible considerations, the]~~ The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at ~~[a rate of interest of three per cent per annum of percentages]~~ rates of interest as indicated in subsection (e) of the net considerations paid prior to that time, decreased by the sum of:

- ~~[(A) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent per annum; and~~

- ~~(B) The amount of any indebtedness to the company on the contract, including interest due and accrued and increased by any existing additional amounts credited by the insurer to the contract.]~~

- (1) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest as indicated in subsection (e);
- (2) An annual contract charge of \$50, accumulated at rates of interest as indicated in subsection (e);
- (3) Any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in subsection (e); and
- (4) The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount ~~[not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent of the net consideration for the first contract year and eighty-seven and one-half per cent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per cent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per cent.] equal to eighty-seven and five-tenths per cent of the gross considerations credited to the contract during the contract year.~~

- (2) ~~With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:~~
 - (A) ~~The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent of the net consideration for the first contract year plus twenty-two and one-half per cent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.~~
 - (B) ~~The annual contract charge shall be the lesser of \$30 or ten per cent of the gross annual consideration.~~
- (3) ~~With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety per cent and the net consideration shall be the gross consideration less a contract charge of \$75.~~

~~Notwithstanding any other provision of this section, for any contract issued after June 30, 2002, and before July 1, 2004, the interest rate at which net considerations, prior withdrawals, and partial surrenders shall be accumulated, for the purpose of determining minimum nonforfeiture amounts, shall be one and one-half per cent.]~~

(e) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three per cent a year and the following, which shall be specified in the contract if the interest rate will be reset:

- (1) The five-year constant maturity treasury rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one per cent, specified in the contract not later than fifteen months prior to the contract issue date or redetermination date under paragraph (4);
- (2) Reduced by one hundred twenty-five basis points;
- (3) Where the resulting interest rate is not less than one per cent; and
- (4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. As used in this paragraph, "basis" means the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

(f) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (e)(2) by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each subsequent redetermination date, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction. The commissioner may adopt rules to implement this subsection and provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

[(e)] (g) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal

to the minimum nonforfeiture amount on that date. The present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

~~[(f)]~~ (h) For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, the present value being calculated on the basis of an interest rate not more than one per cent higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under these contracts shall be at least equal to the cash surrender benefit.

~~[(g)]~~ (i) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

~~[(h)]~~ (j) For the purpose of determining the benefits calculated under subsections ~~[(f)]~~ (h) and ~~[(g)]~~ (i), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date ~~[is to]~~ shall be the latest date for which election shall be permitted by the contract, but ~~[is not to]~~ shall not be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

~~[(i)]~~ (k) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that the benefits are not provided.

~~[(j)]~~ (l) Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled consideration beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

~~[(k)]~~ (m) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to

the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding ~~[the provisions of]~~ subsections ~~[(e), (f), (g), (h), and (i), (j), and (l)]~~, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of additional benefits shall not be required in any paid-up benefits, unless these additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

~~[(1) After June 1, 1979, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before June 1, 1981. After the filing of the notice, then upon the specified date, which shall be the operative date of this section for the insurer, this section shall become operative with respect to annuity contracts thereafter issued by the insurer. If an insurer makes no election, the operative date of this section for the insurer shall be June 1, 1981.]”~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004; provided that:

- (1) Section 1 shall be repealed on July 1, 2006;
- (2) An insurer may elect to apply section 2 to annuity contracts on a contract form-by-contract form basis beginning July 1, 2004, and ending June 30, 2006; and
- (3) Section 2 shall apply to annuity contracts issued by an insurer beginning July 1, 2006.

(Approved April 22, 2004.)

ACT 16

H.B. NO. 2378

A Bill for an Act Relating to the Sovereign Immunity of Boards and Commissions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-35, Hawaii Revised Statutes, is amended to read as follows:

“§26-35 Administrative supervision of boards and commissions. (a) Whenever any board or commission is established or placed within or transferred to a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department, the following provisions shall apply except as otherwise specifically provided by this chapter:

- (1) The head of the department shall represent the board or commission in communications with the governor and with the legislature.
- (2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department.

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- (3) All rules and regulations adopted by the board or commission shall be subject to the approval of the governor.
 - (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission subject to the approval of the head of the department and to applicable personnel laws.
 - (5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department.
 - (6) The head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the board or commission.
 - (7) Any quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department.
 - (8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.
- (b) Every board or commission established or placed within a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department shall be considered an arm of the State and shall enjoy the same sovereign immunity available to the State."

SECTION 2. Section 201B-5, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~201B-5] Exemption of Hawaii tourism authority from administrative supervision of boards and commissions. Notwithstanding any law to the contrary, the authority shall be exempt from section 26-35 with the exception of section [~~26-35(2),~~ 26-35(a)(2), (3), (7) and (8)."

SECTION 3. Section 201G-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The corporation shall employ, exempt from chapter 76 and section [~~26-35(4),~~ 26-35(a)(4), an executive director and an executive assistant. Effective July 1, 1998, the salary of the executive director shall be set by the governor within the range from \$72,886 to \$77,966 a year. Effective July 1, 1998, the salary of the executive assistant shall be set by the governor within the range from \$65,597 to \$70,169 a year. The corporation may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent and temporary, as required. The corporation may also employ officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, not subject to chapter 76, when in the determination of the corporation, the services to be performed are unique and essential to the execution of the functions of the corporation. The corporation may call upon the attorney general for legal services as it may require. The corporation may delegate to one or more of its agents or employees the powers and duties as it deems proper."

SECTION 4. Section 206M-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board shall be exempt from section [~~26-35(4)~~ 26-35(a)(4) and (5)."

SECTION 5. Section 323F-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the Hawaii health systems corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be placed within the department of health for the administrative purposes specified in section [26-35(6)] 26-35(a)(6) only.”

SECTION 6. Section 323F-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation board may appoint, exempt from chapter 76 and section [26-35(4);] 26-35(a)(4), a chief executive officer of the corporation whose salary shall be set by the corporation board. The chief executive officer may also appoint up to eighteen other personnel, exempt from chapters 76 and 89, to work directly for the chief executive officer and the corporate board.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 23, 2004.)

ACT 17

H.B. NO. 2685

A Bill for an Act Relating to Bail Jumping.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 710-1024, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of bail jumping in the first degree if, having been released from custody by court order with or without bail, upon condition that the person will subsequently appear as ordered in connection with a charge of having committed a felony, the person [intentionally] knowingly fails to appear as ordered.”

SECTION 2. Section 710-1025, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of bail jumping in the second degree if, having been released from custody by court order with or without bail, upon condition that the person will subsequently appear as ordered in connection with a charge of having committed a misdemeanor or a petty misdemeanor, the person [intentionally] knowingly fails to appear as ordered.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 23, 2004.)

ACT 18

H.B. NO. 2689

A Bill for an Act Relating to Stalking.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

“§571-14 Jurisdiction; adults. (a) Except as provided in sections 603-21.5 and 604-8, the court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child’s parent or guardian or by any other person having the child’s legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2).
- (2) To try any adult charged with:
 - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
 - (B) An offense, other than a felony, against the person of the defendant’s husband or wife;
 - (C) Any violation of an order issued pursuant to chapter 586; or
 - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged.

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584.
- (4) In proceedings under chapter 575, the Uniform Desertion and Non-support Act, and under chapter 576B, the Uniform Interstate Family Support Act.
- (5) For commitment of an adult alleged to be mentally defective or mentally ill.
- (6) In all proceedings for support between parent and child or between husband and wife.
- (7) In all proceedings for pre-trial detention or waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-13 or 571-22.
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders.
- (9) In all proceedings to appoint a guardian of the person of an adult.
- (10) For the protection of dependent adults under chapter 346, part X.

In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.

(b) The court shall have concurrent jurisdiction with the district court over violations of sections 707-712, 707-717, 707-722, 708-822, 708-823, 710-1010.5, 711-1106, and 711-1106.5 when multiple offenses are charged through complaint or

indictment and at least one offense is a violation of an order issued pursuant to chapter 586 or a violation of section 709-906.

(c) The court shall have concurrent jurisdiction with the circuit court over violations of section 711-1106.4.”

SECTION 2. Section 603-21.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The several circuit courts shall have concurrent jurisdiction with the family court over:

- (1) Any felony under section 571-14, violation of an order issued pursuant to chapter 586, or a violation of section 709-906 when multiple offenses are charged through complaint or indictment and at least one other offense is a criminal offense under subsection (a)(1); ~~[and]~~
- (2) Any felony under section 571-14 when multiple offenses are charged through complaint or indictment and at least one other offense is a violation of an order issued pursuant to chapter 586, a violation of section 709-906, or a misdemeanor under the jurisdiction of section 604-8[-]; ~~and~~
- (3) Any violation of section 711-1106.4.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 23, 2004.)

ACT 19

H.B. NO. 2198

A Bill for an Act Relating to School Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§302A- Self-administration of medication by student permitted.** (a) The department shall permit the self-administration of medication by a student for asthma, anaphylaxis, or other potentially life-threatening illnesses; provided that:

- (1) The student’s parent or guardian shall provide the department with written authorization for the self-administration of medication;
- (2) The student’s parent or guardian shall provide the department with written certification from the student’s physician stating that the student:
 - (A) Has asthma, anaphylaxis, or another potentially life-threatening illness; and
 - (B) Is capable of, and has been instructed in, the proper method of self-administration of medication;

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- (3) The department shall inform the student's parent or guardian in writing that the department and its employees or agents shall not incur any liability as a result of any injury arising from the self-administration of medication by the student;
- (4) The student's parent or guardian shall sign a statement acknowledging that:
 - (A) The department and its employees or agents shall not incur any liability as a result of any injury arising from the self-administration of medication by the student; and
 - (B) The parent or guardian shall indemnify and hold harmless the department and its employees or agents against any claims arising out of the self-administration of medication by the student; and
- (5) The permission shall be effective for the school year for which it is granted and shall be renewed for each subsequent school year upon the fulfillment of the requirements in paragraphs (1) through (4).
 - (b) Notwithstanding any other law to the contrary, a student who is permitted to self-administer medication under this section shall be permitted to carry an inhaler or auto-injectable epinephrine, or both, at all times if the student does not endanger the student's person or other persons through the misuse of the inhaler; provided that the department, its employees or agents may confiscate a student's medication, inhaler, or auto-injectable epinephrine if the student's self-administration of the medication exceeds the student's prescribed dosage, or if the student endangers others with the student's medication, inhaler, or auto-injectable epinephrine.

For the purposes of this section, the term "inhaler" includes:

 - (1) Metered-dose, breath-actuated, and dry powder inhalers; and
 - (2) Spacers and holding chambers.
 - (c) Any person who acts in accordance with the requirements of this section shall be immune from any civil or criminal liability arising from these acts, except where the person's conduct would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 26, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 20

S.B. NO. 2815

A Bill for an Act Relating to Milk Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 157-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Without regard to the notice and public hearing requirements of chapter 91 and based on the specific formulas or criteria adopted under section 157-31(a)(2), the board may establish by order the minimum prices and salvage values for milk to be paid to producers by producer-distributors and distributors. [~~An order establish-~~

~~ing minimum prices or salvage values for milk, or both, shall be subject to approval by the governor prior to the order taking effect.]~~

- (1) Prior to the effective date of any order, the department shall give public notice that includes:
 - (A) Either a statement of the substance of the proposed order; or a statement of the minimum prices or salvage values for milk to be established, and
 - (B) A statement that a copy of the proposed order will be mailed to any interested person who requests a copy, together with a description of where and how the requests may be made.
- (2) The notice shall be mailed to all persons who have made a timely written request of the department for advance notice of these orders or of the department's rulemaking proceedings. The department may require reimbursement for the cost of preparing and mailing the copies."

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 28, 2004.)

ACT 21

H.B. NO. 1926

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 315-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§315-1 Enactment of agreement.**~~[I]~~ The Interstate Agreement on Qualifications of Educational Personnel as contained herein is hereby enacted into law and entered into on behalf of the State of Hawaii with any and all other States (as defined in the Agreement) legally enacting the Agreement in the form substantially as follows:

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

ARTICLE I PURPOSE, FINDINGS, AND POLICY

1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party States find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move

for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Compact can increase the availability of educational manpower.

ARTICLE II DEFINITIONS

As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. "Educational personnel" means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.
2. "Designated State official" means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.
3. "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.
4. "State" means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.
5. "Originating State" means a State (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.
6. "Receiving State" means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

ARTICLE III INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS

1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated state officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated state official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical, to that prevailing in his own State.

2. Any such contract shall provide for:
 - (a) Its duration.
 - (b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.
 - (c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.
 - (d) Any other necessary matters.

3. No contract made pursuant to this Agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any persons qualified because of successful completion of a program prior to January 1, 1954.

5. The ~~[certification]~~ license or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any ~~[certification]~~¹ license or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a ~~[certification]~~¹ license or other qualifying document initially granted or approved in the receiving State.

6. A contract committee composed of the designated state officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

ARTICLE IV APPROVED AND ACCEPTED PROGRAMS

1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

ARTICLE V INTERSTATE COOPERATION

The party States agree that:

1. They will, so far as practicable, prefer the making of multi-lateral contracts pursuant to Article III of this Agreement.

2. They will facilitate and strengthen cooperation in interstate licensing or certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in licensing or certification and other elements of educational personnel qualification.

ARTICLE VI AGREEMENT EVALUATION

The designated state officials of any party State may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

ARTICLE VII
OTHER ARRANGEMENTS

Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

ARTICLE VIII
EFFECT AND WITHDRAWAL

1. This Agreement shall become effective when enacted into law by two States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

ARTICLE IX
CONSTRUCTION AND SEVERABILITY

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters.”

SECTION 2. Section 315-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§315-2 Official for State.]]~~ The “designated State Official” for Hawaii shall be the ~~[superintendent of education of the State.]~~ executive director of the Hawaii teacher standards board.”

SECTION 3. Section 315-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§315-3 Contracts under agreement.]]~~ True copies of all contracts made on behalf of the State pursuant to the Agreement shall be kept on file in the office of the ~~[department of education]~~ Hawaii teacher standards board and in the office of the lieutenant governor.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 28, 2004.)

Note

1. Prior to amendment "certificate" appeared here.

ACT 22

S.B. NO. 2005

A Bill for an Act Relating to Medical Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 334-5, Hawaii Revised Statutes, is amended to read as follows:

"§334-5 Confidentiality of records. All certificates, applications, records, and reports made for the purposes of this chapter and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except so far (1) as the person identified, or the person's legal guardian, consents, or (2) as disclosure may be deemed necessary by the director of health or by the administrator of a private psychiatric or special treatment facility to carry out this chapter, or (3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to the public interest, or (4) as disclosure may be deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, to protect and advocate the rights of persons with mental illness who reside in facilities providing treatment or care, or (5) as disclosure is made to the person's health care insurer to obtain reimbursement for services rendered to the person, except for records subject to Title 42 Code of Federal Regulations Part 2, confidentiality of alcohol and drug abuse patient records; provided that disclosure shall be made only if the [insurer] provider informs the person that a reimbursement claim will be made to the person's insurer, the person is afforded an opportunity to pay the reimbursement claim directly, and the person does not pay. For the purposes of this section, "facilities" shall include, but not be limited to, hospitals, nursing homes, community facilities for mentally ill individuals, boarding homes, and care homes.

Nothing in this section shall preclude disclosure, upon proper inquiry, of any information relating to a particular patient and not clearly adverse to the interests of the patient, to the patient, the patient's family, legal guardian, or relatives, nor, except as provided above, affect the application of any other rule or statute of confidentiality. The use of the information disclosed shall be limited to the purpose for which the information was furnished."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 28, 2004.)

A Bill for an Act Relating to Business Practices.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 227D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§227D- Confidentiality of business trade secrets and other proprietary information of a tenant or prospective tenant of the authority. (a) Notwithstanding chapter 92F or any other law to the contrary, any government record made or received by any member or employee of the authority shall be subject to segregation, and information contained therein shall not be subject to public disclosure, inspection, or duplication to the extent that the information:

- (1) Consists of business trade secrets of a tenant or prospective tenant of the authority;
- (2) Consists of confidential or proprietary commercial or financial information regarding the operation of any business of a tenant or prospective tenant of the authority; or
- (3) Relates to the competitive position in a particular business or field of endeavor of a tenant or prospective tenant of the authority.

Information described in paragraphs (1), (2), and (3) that is contained in a business plan attached to a lease of state land shall be subject to segregation as required by this section. This section, however, shall not apply to leases of state land themselves and other information required to be public by section 92F-12(a)(5).

(b) Notwithstanding chapter 92 or any other law to the contrary, any discussion or consideration by the board or any committee of the board of the type of non-disclosable information described in subsection (a) may be held in an executive meeting closed to the public.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved April 28, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Corrections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353-61, Hawaii Revised Statutes, is amended to read as follows:

“§353-61 Hawaii paroling authority; appointment; tenure; qualifications. Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, the director, the president of the [~~Hawaii correctional association,~~] Hawaii Criminal Justice Association, the president of the bar association of Hawaii, a representative designated by the head of the

[Hawaii council of churches,] Interfaith Alliance Hawaii, a member from the general public to be appointed by the governor and the president of the Hawaii chapter of the national association of social workers. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairperson or as a member, for each vacancy. The governor shall appoint, in the manner prescribed by section 26-34, a paroling authority to be known as the Hawaii paroling authority, to consist of three members one of whom shall be designated chairperson. Of the members first appointed after May 13, 1976, the member designated as chairperson shall be appointed for a term of four years, one member shall be appointed for a term of three years, and one member shall be appointed for a term of two years; thereafter all appointments shall be made for terms of four years, commencing from the date of expiration of the last preceding term. Any vacancy in an unexpired term shall be filled by appointment for the remainder of the unexpired term. Nominees to the authority shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 25

S.B. NO. 2820

A Bill for an Act Relating to Agricultural Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 166E-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department shall administer a program to manage the transferred non-agricultural park lands under rules adopted by the board pursuant to chapter 91. The program and its rules shall be separate and distinct from the agricultural park program and its rules. Non-agricultural park lands are not the same as, and shall not be selected or managed as are lands under agricultural park leases. Notwithstanding any other law to the contrary, the program shall include the following conditions pertaining to encumbered non-agricultural park lands:

- (1) The lessee or permittee shall perform in full compliance with the existing lease or permit;
- (2) The lessee or permittee shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county; ~~and~~
- (3) The lessee’s or permittee’s agricultural operation shall be economically viable as specified by the board[-]; and
- (4) No encumbered or unencumbered non-agricultural park lands with soils classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be transferred for the use or development of golf courses, golf driving ranges, and country clubs.

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The transfer of non-agricultural park lands shall be done in a manner to be determined by the board of agriculture ~~[[and] may include more than one parcel; provided that these parcels are geographically adjacent to one another].~~”

SECTION 2. Section 166E-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§166E-5]]~~ **Extension of other agricultural qualified and encumbered non-agricultural park lands encumbered by permit and transferred to and managed by the department.** Notwithstanding chapter 171, the board shall establish criteria and rules to allow the cancellation, renegotiation, and extension of transferred encumbrances by the department. Notwithstanding any law to the contrary, ~~[leases of]~~ qualified and encumbered non-agricultural park lands transferred to the department shall not have [their] the respective length of term of the lease or rents reduced over the remaining fixed term of the [leases:] applicable encumbrances.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 26

S.B. NO. 2905

A Bill for an Act Relating to Medical Board Disciplinary Action.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 453-8.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other actions authorized by law, in disciplining a licensee in a proceeding held in conformity with chapter 91, the board may impose one or more of the following ~~[actions:]~~ sanctions:

- (1) Place the licensee on probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians or surgeons;
- (2) Suspend the license;
- (3) Revoke the license;
- (4) Limit the license by restricting the fields of practice in which the licensee may engage;
- (5) Fine the licensee, including assessment against the licensee of the costs of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be not less than \$500 and not more than \$5,000 for each violation, exclusive of the costs of the disciplinary proceedings; ~~[or]~~
- (6) Require further education or training or require proof of performance competency~~[-];~~ or
- (7) Censure or reprimand.”

SECTION 2. Section 460-14.5, Hawaii Revised Statutes, is amended to read as follows:

“§460-14.5 Disciplinary action. In disciplining a licensee in a proceeding under section 460-12, the board may impose one or more of the following ~~[actions:]~~ sanctions:

- (1) Place the licensee on probation, including conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed osteopathic physicians and surgeons;
- (2) Suspend the license;
- (3) Revoke the license;
- (4) Limit the license by restricting the fields of practice in which the licensee may engage;
- (5) Fine the licensee, including assessment against the licensee of the costs of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be not less than \$500 nor more than \$5,000 for each violation exclusive of the costs of the disciplinary proceedings; ~~[or]~~
- (6) Require further education or training or require proof of performance competency~~[-]; or~~
- (7) Censure or reprimand.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 27

S.B. NO. 2589

A Bill for an Act Relating to Health Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 432E-5, Hawaii Revised Statutes, is amended by amending subsection (d):

“(d) A managed care plan shall send notice of its final internal determination within ~~[forty-five]~~ sixty days of the submission of the complaint to the enrollee, the enrollee’s appointed representative, if applicable, the enrollee’s treating provider, and the commissioner. The notice shall include the following information regarding the enrollee’s rights and procedures:

- (1) The enrollee’s right to request an external review;
- (2) The sixty-day deadline for requesting the external review;
- (3) Instructions on how to request an external review; and
- (4) Where to submit the request for an external review.”

SECTION 2. Section 432E-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An expedited appeal shall be authorized if the application of the ~~[forty-five]~~ sixty day standard review time frame may:

- (1) Seriously jeopardize the life or health of the enrollee;
- (2) Seriously jeopardize the enrollee’s ability to gain maximum functioning; or

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- (3) Subject the enrollee to severe pain that cannot be adequately managed without the care or treatment that is the subject of the expedited appeal.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 28

S.B. NO. 2950

A Bill for an Act Relating to Generic Substitution of Prescription Drug Products.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 328-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘21 C.F.R.’ means Title 21, Code of Federal Regulations.”

SECTION 2. Section 328-91, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“‘United States Food and Drug Administration-approved generic drug product with therapeutic equivalency evaluations’ means a generic drug product approved for marketing by the United States Food and Drug Administration pursuant to 21 C.F.R. part 314 and with established bioequivalency to the referenced brand drug pursuant to 21 C.F.R. part 320.”

2. By amending the definitions of “compendia of therapeutically equivalent generic drugs” and “equivalent drug product” to read:

“‘Compendia of therapeutically equivalent generic [drugs²²] drug products’ means the Orange Book and any United States Food and Drug Administration documentation of any United States Food and Drug Administration-approved generic drug product with therapeutic equivalency[;] evaluations, including but not limited to:

- (1) Letters of approval of Abbreviated New Drug Applications with therapeutic equivalency evaluations;
- (2) Published listings of approved New Drug Applications or approved Abbreviated New Drug Applications with therapeutic equivalency evaluations; and
- (3) Listings of first time generics with therapeutic equivalency evaluations, adopted by the [board:] director.

“Equivalent generic drug product” means a drug product with the same established name, active ingredient strength, quantity, and dosage form as the drug product identified in the prescription, and: (1) that is listed as therapeutically equivalent (i.e., addition) in the current [state drug formulary:] Hawaii additions and deletions list; or (2) that is listed in the compendia of therapeutically equivalent generic drug products and is not listed as therapeutically inequivalent (i.e., deletion) in the Hawaii additions and deletions list.”

SECTION 3. Section 328-96, Hawaii Revised Statutes, is amended to read as follows:

“§328-96 Drug formulary[.]; Hawaii additions and deletions list. (a) The board may adopt rules, pursuant to chapter 91, to effectuate the purpose of this part. Without regard to chapter 91, the [board] director may adopt as rules the compendia of therapeutically equivalent generic [drugs] drug products as the state drug formulary of equivalent multiple source drug products. The board may adopt rules pursuant to chapter 91 to establish a Hawaii additions and deletions list[; ~~provided that section 328-92(c) shall apply, and no pharmacist shall substitute an equivalent generic drug product for any prescription for an anti-epileptic drug to treat epilepsy, except upon the consent of the practitioner and the patient or the patient’s parent or guardian~~]. Upon the adoption of the compendia of therapeutically equivalent generic [drugs] drug products by the [board,] director, the [board] department shall notify all pharmacies in the State and other interested individuals, within thirty working days, that the formulary has been updated. The Hawaii additions and deletions list may list additional substitutable drug products that are determined by the board to be safe, effective, and therapeutically equivalent. The Hawaii additions and deletions list may delete drug products listed in the compendia of therapeutically equivalent generic [drugs] drug products upon the board’s finding that product quality or therapeutic equivalency or bioequivalency, as appropriate, is not adequately assured.

(b) Pursuant to chapter 91, the Hawaii additions and deletions list may be changed, added to, or deleted from as the board deems appropriate. Any person who requests that any change be made or that a drug product be included or added to or deleted from the Hawaii additions and deletions list shall have the burden of proof to show cause why the change, inclusion, addition, or deletion should be made.

(c) The board shall revise or supplement the Hawaii additions and deletions list as necessary.

(d) The department shall provide for distribution of the Hawaii additions and deletions list and its revisions and supplements, and the dissemination of notices of changes to the compendia of therapeutically equivalent generic [drugs,] drug products to all pharmacies in the State and to any other interested individuals. The department may establish fees to be charged to persons who receive the Hawaii additions and deletions list and its revisions and supplements, and notices of changes to the compendia of therapeutically equivalent generic [drugs,] drug products. The amounts of the fees charged shall be approximately the same as the costs of producing and distributing the Hawaii additions and deletions list and its revisions and supplements, and the notices of changes to the compendia of therapeutically equivalent generic [drugs,] drug products.

(e) Each pharmacy in the State shall:

(1) Maintain and update the compendia of therapeutically equivalent generic [drugs] drug products as it is approved by the [board,] director; and

(2) Obtain the Hawaii additions and deletions list.

(f) The department shall provide for public education regarding the provisions of this part and shall monitor the effects of this part.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 29

H.B. NO. 2341

A Bill for an Act Relating to the Agribusiness Development Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Currently, the members of the board of directors of the agribusiness development corporation do not have staggered terms. Therefore, many terms expire at the same time, leaving little continuity on the board.

The purpose of this Act is to provide for staggered terms for the board of directors of the agribusiness development corporation by providing that as of July 1, 2005, initial appointments shall be for terms which, as nearly as possible, provide for expiration of an equal number of terms at intervals of one year.

SECTION 2. Section 163D-3, Hawaii Revised Statutes, is amended by amending section¹ (b) to read as follows:

“(b) The board of directors of the corporation shall consist of eleven voting members, of whom eight shall be appointed by the governor. [These] The terms of these eight members shall be four years; provided that, commencing on July 1, 2005, the governor shall reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. The eight members shall be selected on the basis of their knowledge, experience, and proven expertise in small and large businesses within the agricultural industry, agricultural economics, banking, real estate, finance, promotion, marketing, and management. Of these eight members, one shall be from the city and county of Honolulu, one shall be from the county of Hawaii, one shall be from the county of Maui, one shall be from the county of Kauai, and four shall be appointed at-large. The director of business, economic development, and tourism; the chairperson of the board of agriculture; and the chairperson of the board of land and natural resources, or their designated representatives, shall be ex-officio, voting members of the board. All members shall continue in office until their respective successors have been appointed and qualified. The board shall annually elect its chairperson from among its members; provided that the chairperson shall not be an ex-officio member.”

SECTION 4.¹ Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5.¹ This Act shall take effect upon its approval.

(Approved April 29, 2004.)

Note

1. So in original.

ACT 30

H.B. NO. 2414

A Bill for an Act Relating to Dental Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 132, Session Laws of Hawaii 2001, as amended by Act 219, Session Laws of Hawaii 2002, and Act 128, Session Laws of Hawaii 2003, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval and shall be repealed on July 1, [2004.] 2005.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 30, 2004.

(Approved April 29, 2004.)

ACT 31

H.B. NO. 2426

A Bill for an Act Relating to the Licensing Requirements for Elevator Mechanics.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 448H-1, Hawaii Revised Statutes, is amended by amending the definition of “apprentice elevator mechanic” to read as follows:

““Apprentice elevator mechanic” means any person who is in training to acquire the skill to become an elevator mechanic and who is required to work for at least ~~[two]~~ four years under the supervision of an elevator mechanic duly licensed under ~~[the provision of]~~ section 448H-6.”

SECTION 2. Section 448H-6, Hawaii Revised Statutes, is amended to read as follows:

“§448H-6 Qualifications for license. No person shall be licensed as an elevator mechanic unless the person has satisfactorily passed the examination administered by the board[;] and satisfactorily completed at least ~~[two]~~ four years of training under the supervision of a licensed~~[, registered, or journey worker]~~ elevator mechanic.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 32

H.B. NO. 2498

A Bill for an Act Relating to Interim Rules of the Department of Land and Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Hawaii’s unique natural resources demand the highest level of protection from extinction. The purpose of this Act is to authorize the department of land and natural resources to adopt, implement, and enforce interim rules in order to prevent the extinction of Hawaii’s native species.

SECTION 2. Chapter 195D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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“§195D- Interim rulemaking. (a) The department, subject to the provisions of this section, may declare any indigenous species as endangered and establish, implement, and enforce interim rules governing the exportation from the State or the taking, possession, sale, offer for sale, delivery, or transport within the State, by any means whatsoever, of any such endangered species. These rules shall not be subject to chapter 91.

(b) An interim rule may be adopted in the event that the exportation, taking, possession, sale, offer for sale, delivery, or transport of any indigenous species, in the absence of effective rules, creates a significant risk of a local extirpation or species extinction, which is so imminent in nature as to constitute an emergency. No interim rule may be adopted without such finding by the department.

(c) Interim rules adopted pursuant to this section shall be effective as stated by the rules; provided that:

- (1) Any interim rule shall be published statewide at least once as provided in section 1-28.5(a)(1) within five days after issuance; and
- (2) No interim rule shall be effective for more than one hundred eighty days.’’

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 33

H.B. NO. 2539

A Bill for an Act Relating to Hospitals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 323D-49, Hawaii Revised Statutes, is amended to read as follows:

“§323D-49 Certificates of need[;]; licenses and permits. (a) No permit or license shall be issued by any county or state officer for the development, construction, expansion, alteration, conversion, initiation, or modification of a health care facility or health care service, other than an existing hospital, or for the operation of a new health care facility or health care service unless there is submitted in connection with the application for such permit or license a current certificate of need issued by the state agency or a statement issued by the state agency that the health care facility or health care service is not required to hold a certificate of need under this part.

(b) No building permit shall be issued by any county or state officer for the development, construction, expansion, alteration, conversion, initiation, or modification of an existing hospital unless there is submitted in connection with the application for such building permit a current certificate of need issued by the state agency or a statement issued by the state agency that the existing hospital is not required to hold a certificate of need under this part.’’

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 34

H.B. NO. 2558

A Bill for an Act Relating to Pension Plans.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 651-124, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§651-124]]~~ **Pension money exempt.** The right of a debtor to a pension, annuity, retirement or disability allowance, death benefit, any optional benefit, or any other right accrued or accruing under any retirement plan or arrangement described in section 401(a), 401(k), 403(a), 403(b), 408, 409 (as in effect prior to January 1, 1984), 414(d), or 414(e) of the Internal Revenue Code of 1954, as amended, or any fund created by the plan or arrangement, shall be exempt from attachment, execution, seizure, the operation of bankruptcy or insolvency laws under 11 United States Code section 522(b), or under any legal process whatever. However, this section shall not apply to:

- (1) [a] A “qualified domestic relations order” as defined in section 206(d) of the Employee Retirement Security Act of 1974, as amended, or in section 414(p) of the Internal Revenue Code of 1954, as amended~~[-];~~ and
- (2) ~~[contributions]~~ Contributions made to a plan or arrangement within the three years before the date a debtor files for bankruptcy, whether voluntary or involuntary, or within three years before the date a civil action is initiated against the debtor, except for contributions to a retirement plan established by state statute if the effect would be to eliminate a state employee’s retirement service credit.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 35

H.B. NO. 2630

A Bill for an Act Relating to Motor Vehicle Rental Industry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1996, the legislature amended chapter 437D, Hawaii Revised Statutes (HRS), to allow U-drive companies to offer the same fuel-purchase options to their lessees as were being offered in other states. However, unlike other states, Hawaii prohibited officers, agents, employees, and representatives of U-drive companies from being evaluated and from being directly or indirectly compensated

for the sale of these options, despite the fact that the options were being purchased by lessees.

Since there has been no significant abuse related to the sale of fuel-purchase options by U-drive employees, and since the present law allows lessees to cancel the option by returning the vehicle with a full tank of fuel if the lessees later change their mind, the legislature finds that the prohibition against direct or indirect compensation should be removed so that Hawaii's employees are treated fairly. Like U-drive employees in other states, Hawaii's U-drive employees should be allowed to be evaluated and compensated on the sale of fuel-purchase options.

The purpose of this Act is to remove the prohibition against commissions and compensations related to the sale of fuel-purchase options. However, it is not the intent of the legislature to remove or change the penalties for unfair competition or unfair trade practices in the motor vehicle trade industry pursuant to sections 437D-15 and 480-2, HRS. The legislature finds that these penalties are effective, and have been a major deterrent of abuses in the motor vehicle rental industry.

SECTION 2. Section 437D-14, Hawaii Revised Statutes, is amended to read as follows:

“§437D-14 Fuel charges. (a) Except as provided in this section, refueling charges are prohibited.

(b) Upon the lessee's return of the vehicle, if the amount of fuel remaining in the vehicle is less than the amount originally provided by the lessor, the lessor may charge the lessee to refuel the vehicle based upon the number of gallons or liters used by the lessee. The amount of fuel ~~[which]~~ that may be charged to the lessee shall be calculated in one of two ways:

- (1) If the vehicle was delivered to the lessee with a full tank, the number of gallons or liters required to refill the tank; or
- (2) If the vehicle was rented with less than a full tank, the number of gallons or liters less than the amount originally provided by the lessor according to the vehicle's gas gauge as read both before and after the lessee's use thereof, employing an appropriate chart showing the number of gallons or liters corresponding to the gas gauge readings. Each chart shall be specifically keyed to the model of car.

(c) Upon the lessee's return of the vehicle, if the amount of fuel remaining in the rental vehicle is greater than the amount originally provided by the lessor upon delivery of the vehicle to the lessee, the lessor shall credit the lessee an amount based on the gallons or liters added by the lessee, calculated by the method set forth in subsection (b)(2).

(d) In the event that the lessor has no reasonably accessible refueling facilities, the lessor is not required to give the credit to the lessee as described in subsection (c); provided that if no credit is given, the lessor shall disclose that fact to the lessee at the time the rental agreement is signed.

(e) The lessor shall provide the lessee with written notice of the amount to be credited, except as provided in subsection (d), or charged on a per gallon or per liter basis.

(f) The price per gallon or per liter ~~[which]~~ that is charged for the amount of fuel required to refuel the vehicle, as provided in subsection (b), shall not exceed the average of the locally prevailing retail market price for similar fuel sold at self-service gasoline pumps by commercial gasoline dealers and a reasonable surcharge not to exceed one-half of that retail price.

(g) The per gallon or per liter amount ~~[which]~~ that is credited pursuant to subsection (c), except as provided in subsection (d), may not be lower than the locally prevailing retail market price for similar fuel sold by commercial gasoline dealers.

(h) Nothing in this section shall prohibit the lessor from offering the lessee the option of purchasing, at the time of taking delivery of the vehicle, a full tank of fuel from the lessor at a price per gallon or per liter that shall not exceed the average of the locally prevailing retail market price for similar fuel sold at self-service gasoline pumps by commercial gasoline dealers; provided that the option includes the provisions that:

- (1) If the vehicle is driven one hundred miles or less, and the lessee has not returned the vehicle with a full tank of fuel, the lessee shall be credited for the amount charged to the lessee for the purchase of fuel when the lessee took delivery of the vehicle, and be charged in the method set forth in subsection (b); or
- (2) If the lessee returns the vehicle with a full tank of fuel, the lessee shall be credited for the amount charged to the lessee for the purchase of fuel when the lessee took delivery of the vehicle.

~~[(i) No lessor or officer, employee, agent, or other representative of the lessor shall pay or receive a commission for selling any specific or particular options for fuel charges as contained within this section. Any violation of this section shall be an unfair or deceptive act or practice as provided in section 480-2. As used in this section, "commission" includes any compensation, bonus, award, or remuneration, whether direct, indirect, or otherwise, which is calculated by means of a formula, process, evaluation, or other mechanism which considers sales of options for fuel charges as a factor in any manner. "Commission" also includes any performance evaluation which could be used in determining promotions, raises, or other personnel decisions, or any other device which serves to encourage the sale of any specific or particular option for fuel charges.]~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved April 29, 2004.)

ACT 36

H.B. NO. 1819

A Bill for an Act Relating to Motor Vehicle Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10C-119, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-119 Insurer's requirements. (a) Prior to licensing an insurer to transact a motor vehicle insurance business in this State, the commissioner:

- (1) Shall effect a thorough examination of the insurer's business experience, financial soundness, and general reputation as an insurer in this and other states. In the discretion of the commissioner, this examination may include an examination of any or all of the business records of the insurer, and an audit of all or any part of the insurer's motor vehicle insurance business, each to be performed by the commissioner's staff or by independent consultants. No license shall be issued until the commissioner is satisfied as to the business experience, financial solvency, and the economic soundness of the insurer;

ACT 37

- (2) ~~[Shall]~~ Except for a member-owned reciprocal insurer and its wholly owned insurer subsidiaries, as specified in subsection (c), shall require of each insurer, and determine that satisfactory arrangements have been made for, the provision of a complete sales and claims service office in the State; and
- (3) Notwithstanding any other requirements of this section or of the insurance code, may require a bond in a reasonable amount and with deposits or sureties determined in the commissioner's discretion of any applicant for a license hereunder. The commissioner may, at any time, make and enforce such a requirement of any licensed insurer or self-insurer.
- (b) The commissioner ~~[may]~~, prior to issuing a certificate of self-insurance to any person, may require the applicant to provide for a complete claims service office and an officer for the purpose of service of process in this State.
- (c) A member-owned reciprocal insurer and its wholly owned insurer subsidiaries shall make satisfactory arrangements for claims service and adjustment and for policy service of all policies sold or issued to consumers in this State if:
- (1) A majority of its members are members of the United States military services, veterans of the United States military services, current or former spouses or dependents of these persons; and
- (2) The primary purpose of the insurer is to serve these persons.
- The member-owned reciprocal insurer and its wholly owned insurer subsidiaries, upon request by the commissioner, shall provide in writing, specific information as to those arrangements.
- ~~[(e)]~~ (d) The commissioner shall adopt rules to permit any licensed accident and health or sickness insurer to secure a license to engage in the business of motor vehicle insurance to provide only those personal injury protection benefits defined in section 431:10C-103.5(a) and optional major medical coverages."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved April 29, 2004.)

ACT 37

H.B. NO. 1898

A Bill for an Act Relating to Financial Literacy for Youth Month.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the percentage of income used nationally for household debt payments, including mortgages, credit cards, and student loans, rose to the highest level in more than a decade in 2001, and remained at fourteen per cent in 2002. In 2001, consumer bankruptcy filings in the United States increased by nineteen per cent over the previous year. Personal savings as a percentage of the gross domestic product decreased from seven and one-half per cent in the early 1980s to two and four-tenths per cent in 2002. Approximately forty million Americans, the "unbanked", are not using mainstream, insured financial institutions.

The legislature finds that fifty-five per cent of college students acquire their first credit card during their first year in college and that eighty-three per cent of college students have at least one credit card. However, forty-five per cent of college

students are in credit card debt, with an average debt of more than \$3,000. Only twenty-six per cent of young adults from thirteen to twenty-one years of age report that their parents actively taught them how to manage money.

A 2002 study found that high school seniors know even less about credit cards, retirement funds, insurance, and other personal finance basics than seniors knew five years earlier. Another 2002 study by the National Council on Economic Education found that a decreasing number of states include personal finance in their education standards for students in grades K-12. While Hawaii requires that personal finance be included as part of its educational standards, it does not require that personal finance courses be offered or that students be tested on the subject.

A 2003 economic literacy survey of Hawaii's workforce, age sixteen and over, conducted by the Hawaii Council on Economic Education found that over fifty per cent of those surveyed did not realize that money loses value in times of inflation. The Hawaii Council on Economic Education advocates financial literacy for all Hawaii citizens and supports teacher training to include financial literacy in Hawaii's schools.

The legislature finds that a greater understanding and familiarity with financial markets and institutions will lead to increased economic activity and growth. Financial literacy empowers individuals to make wise financial decisions and reduces the confusion of an increasingly complex economy.

Personal financial management skills and long-term habits develop during childhood. Personal financial education is essential to ensure that our youth are prepared to manage money, credit, and debt and become responsible workers, heads of households, investors, entrepreneurs, business leaders, and citizens.

The purpose of this Act is to establish April as Financial Literacy for Youth Month in Hawaii.

SECTION 2. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§8- Financial Literacy for Youth Month. The entire month of April shall be known and designated as “Financial Literacy for Youth Month”. This month is not and shall not be construed to be a state holiday.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 38

H.B. NO. 2300

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

PART I. GENERAL PROVISIONS

SECTION 1. This Act shall be known and may be cited as the Judiciary Supplemental Appropriations Act of 2004.

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SECTION 2. Act 120, Session Laws of Hawaii 2003, is amended by amending part II to read as follows:

“PART II. PROGRAM APPROPRIATIONS

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2003, and ending June 30, 2005. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
The Judicial System							
1.	JUD101 - COURTS OF APPEAL						
	OPERATING		JUD	76.00*		76.00*	
			JUD	5,874,885A		5,816,875A	
				243,261W		243,261W	
2.	JUD310 - FIRST JUDICIAL CIRCUIT						
				990.50*		[—990.50*]	
	OPERATING		JUD	991.50*		991.50*	
				56,413,035A		[56,402,835A]	
						57,086,369A	
				35.00*		35.00*	
			JUD	3,112,683B		[—3,112,683B]	
						3,336,418B	
3.	JUD320 - SECOND JUDICIAL CIRCUIT						
	OPERATING		JUD	194.00*		194.00*	
				11,428,602A		[11,428,602A]	
						11,455,871A	
4.	JUD330 - THIRD JUDICIAL CIRCUIT						
	OPERATING		JUD	198.00*		198.00*	
				13,730,441A		13,730,441A	
5.	JUD350 - FIFTH JUDICIAL CIRCUIT						
				81.00*		[—90.00*]	
	OPERATING		JUD	92.00*		92.00*	
				4,794,217A		[—5,138,583A]	
						5,342,235A	
6.	JUD601 - ADMINISTRATION						
				260.00*		[—260.00*]	
	OPERATING		JUD	263.00*		263.00*	
				18,681,566A		[18,693,058A]	
						19,271,747A	
				1.00*		1.00*	
	INVESTMENT CAPITAL		JUD	3,430,261B		3,430,261B	
			JUD	2,710,000C		[—445,000C]	
						42,395,000C	

SECTION 3. Act 120, Session Laws of Hawaii 2003, is amended by amending part IV to read as follows:

“PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 11. The sum of [~~\$3,155,000~~] \$45,105,000 appropriated or authorized in part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part is¹ in thousands of dollars.)²

JUDICIAL SYSTEM

JUD601 - ADMINISTRATION

1. KAPUAIWA BUILDING RENOVATION, OAHU
 DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
 INTERIOR ALTERATIONS AND OTHER
 IMPROVEMENTS AT THE KAPUAIWA BUILDING,
 OAHU.

DESIGN	30		
CONSTRUCTION	600		
EQUIPMENT	20		
TOTAL FUNDING	650C	JUD	C
2. KAUKEAOULI HALE ROOF, PARAPET, AND FIRE ALARM SYSTEM
 IMPROVEMENTS, OAHU
 PLANS, DESIGN, CONSTRUCTION, AND
 EQUIPMENT FOR ROOF, PARAPET, AND FIRE
 ALARM SYSTEM IMPROVEMENTS AT
 KAUKEAOULI HALE, OAHU.

PLANS	1		1
DESIGN	133		30
CONSTRUCTION	800		413
EQUIPMENT	1		1
TOTAL FUNDING	935C	JUD	445C
3. KEAKEALANI BUILDING COURT FACILITIES IMPROVEMENTS, HAWAII
 PLANS, DESIGN, CONSTRUCTION, AND
 EQUIPMENT FOR GENERAL IMPROVEMENTS TO
 JUDICIARY FACILITIES AT THE KEAKEALANI
 BUILDING IN KEALAKEKUA, HAWAII.

PLANS	5		
DESIGN	20		
CONSTRUCTION	100		
EQUIPMENT	25		
TOTAL FUNDING	150C	JUD	C
4. REMODELING AND UPGRADING OF JUDICIARY FACILITIES, STATEWIDE
 PLANS, DESIGN, CONSTRUCTION, AND
 EQUIPMENT FOR REMODELING AND UPGRADING
 JUDICIARY BUILDINGS, STATEWIDE.

PLANS	5		
DESIGN	70		

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	CONSTRUCTION		415	
	EQUIPMENT		10	
	TOTAL FUNDING	JUD	500C	C
5.	ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE			
	PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE.			
	PLANS		1	
	DESIGN		34	
	CONSTRUCTION		150	
	EQUIPMENT		40	
	TOTAL FUNDING	JUD	225C	C
6.	WAHIAWA COURT FACILITY, OAHU			
	PLANS FOR A NEW PERMANENT COURT FACILITY FOR WAHIAWA, OAHU.			
	PLANS		100	
	TOTAL FUNDING	JUD	100C	C
7.	LEGAL AID SOCIETY OF HAWAII, OAHU			
	DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE LEGAL AID SOCIETY OF HAWAII'S BETHEL STREET OFFICE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
	DESIGN		1	
	CONSTRUCTION		149	
	TOTAL FUNDING	JUD	150C	C
7.01.	<u>HILO JUDICIARY COMPLEX, HAWAII</u>			
	<u>CONSTRUCTION AND EQUIPMENT FOR THE HILO JUDICIARY COMPLEX, HAWAII.</u>			
	CONSTRUCTION			34,000
	EQUIPMENT			7,000
	TOTAL FUNDING	JUD	C	41,000C
7.02.	<u>JUVENILE DETENTION HOME EXISTING FACILITIES IMPROVEMENTS, OAHU</u>			
	<u>PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES IMPROVEMENTS AT THE EXISTING JUVENILE DETENTION HOME (HALE HOOMALU), OAHU</u>			
	PLANS			75
	DESIGN			75
	CONSTRUCTION			250
	EQUIPMENT			50
	TOTAL FUNDING	JUD	C	450C
7.03.	<u>CHILDREN'S JUSTICE CENTER/CHILDREN'S RECEIVING HOME, NEW FACILITY, OAHU</u>			
	<u>PLANS, LAND ACQUISITION, AND DESIGN FOR THE DEVELOPMENT OF A NEW FACILITY TO HOUSE THE CHILDREN'S JUSTICE CENTER AND A CHILDREN'S RECEIVING HOME FOR ABUSED OR NEGLECTED CHILDREN.</u>			

<u>PLANS</u>			$\frac{1}{1}$
<u>LAND</u>			$\frac{1}{1}$
<u>DESIGN</u>			$\frac{498}{500C}$
<u>TOTAL FUNDING</u>	<u>JUD</u>	<u>C</u>	

SECTION 4. Act 120, Session Laws of Hawaii 2003, is amended by amending part V to read as follows:

“PART V. ISSUANCE OF BONDS

SECTION 12. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in part II and listed in part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed [~~\$3,155,000.~~] \$45,105,000.”

SECTION 5. Act 120 Session Laws of Hawaii 2003, is amended by adding a new section to read as follows:

“SECTION 12.1. Provided that of the general obligation bond fund appropriation for administration (JUD 601), the sum of \$500,000 for fiscal year 2005 shall be used for the development of the new Children’s Justice Center/Children’s Receiving Home facility; and provided further that no funds shall be expended for the children’s receiving home component of the facility unless matched on a 1:1 basis with funds from private contributions.”

SECTION 6. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 7. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2004.

(Approved April 29, 2004.)

Notes

1. Prior to amendment “are” appeared here.
2. Header missing.

ACT 39

H.B. NO. 2466

A Bill for an Act Making an Emergency Appropriation for the State Workers' Compensation Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is being recommended by the governor for immediate passage, in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 200, Section 72, Session Laws of Hawaii 2003, appropriated \$4,993,726 to the department of human resources development, for the payment of claims against the State, as required by chapter 386, Hawaii Revised Statutes, for the fiscal year beginning July 1, 2003, and ending June 30, 2004.

At this time, however, a critical funding crisis exists. It is estimated that the state workers' compensation fund will be exhausted by January 31, 2004, and the department will not be able to meet its legal obligation to fund the health and welfare benefits that the state workers' compensation claimants are entitled to receive.

The purpose of this Act is to appropriate moneys to allow the State to meet its legal obligation to pay for the workers' compensation claims under chapter 386, Hawaii Revised Statutes.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,055,896, or so much thereof as may be necessary for fiscal year 2003-2004, for the payment of claims against the State as required by chapter 386, Hawaii Revised Statutes.

SECTION 4. The sum appropriated shall be expended by the department of human resources development for the payment of workers' compensation claims.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 29, 2004.)

ACT 40

H.B. NO. 2004

A Bill for an Act Relating to the Illegal Use of Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Parts of this Act are recommended by the joint house-senate task force on ice and drug abatement (task force). The task force found that crystal methamphetamine (ice) use and addiction has reached epidemic proportions, destroying families, resulting in increased criminal activities, and creating a burden on public resources such as child welfare, health, and social services.

The task force concluded that the solution to the ice epidemic is to prevent future generations from engaging in substance abuse and treat the present generation of ice abusers. The task force recommended over \$21,000,000 to fight the ice epidemic.

Ice addiction is a public health crisis. Ice is now the number one substance for which publicly funded treatment for addiction is sought, surpassing admissions for alcohol abuse. Between 1998 and 2002, admissions into treatment for ice increased by approximately eighty per cent.

The legislature finds that early intervention is the key to diverting young adults away from drug use. The treatment gap for adolescents who need treatment and do not receive it is over five thousand based on both state and federal estimates. Alcohol and marijuana are the two greatest threats to youth addiction, with ecstasy use on the rise. The task force recommended that school-based treatment services be expanded to the middle and intermediate schools to provide early intervention and assessment for students and prevent adolescents from graduating to using more dangerous drugs (See Final Report of the Task Force, pp. 34–39). The legislature adopts these recommendations.

The legislature finds that prevention of substance abuse is critical to ensure that the ice epidemic does not spread. The task force recommended policy guidelines for prioritizing the use of funds appropriated for substance abuse prevention: drug education and awareness in the schools and community partnerships, non-school youth activities in communities with the greatest need, education and support for families and parenting women, and community mobilization (See Final Report of the Task Force, pp. 40–46). The legislature adopts these recommendations.

The legislature finds that over six thousand ice users need treatment and fewer than three thousand are able to access publicly funded treatment. For all substance abuse, including alcohol, over eighty-two thousand persons require treatment. The task force found that women of child-bearing age, pregnant women, parents of young children in the home, and Hawaiians are under-served for substance abuse treatment and should be given priority in receiving publicly funded treatment (See Final Report of the Task Force, pp. 54–60). The legislature adopts the findings of the task force and finds that the failure to adequately provide for the substance abuse treatment needs of adults has led to the ice epidemic, which in turn has resulted in devastating societal problems, burdens on public resources, proliferation of illegal drug trafficking, and an increase in property crimes. Increased funding for adult substance abuse treatment is necessary to stop the ice epidemic.

In 2002, the legislature passed Act 161, Session Laws of Hawaii 2002, to divert first-time nonviolent drug offenders to mandatory probation for drug treatment. The legislature did not fund treatment services for offenders eligible for treatment under Act 161. The task force recommended that diversion of offenders into treatment rather than prison is more effective and successful in reducing recidivism. The legislature adopts the task force findings and recommendations. The legislature finds that funding for treatment services for nonviolent first-time drug offenders is necessary to avoid imposing a greater burden on the state's prison system and will result in savings in the costs of incarcerating offenders.

The task force recommended expansion of the canine drug interdiction program to detect illegal drugs in freight and possibly other areas. The legislature accepts this recommendation and finds that canine drug interdiction efforts are necessary to deter the entry of illegal drugs into the State.

The legislature also accepts the recommendations of the task force to fund other services necessary to fight the ice epidemic (See Final Report of the Task Force, pp. 13–15).

The purpose of this Act is to:

- (1) Make appropriations for substance abuse, including ice prevention, treatment, education, and rehabilitation;
- (2) Expand services provided by the drug courts, including family and juvenile drug courts and provide additional circuit judge positions and staff;
- (3) Provide drug treatment services for first-time nonviolent drug offenders;
- (4) Expand canine drug interdiction efforts;
- (5) Provide for an environmental study on the effects of clandestine methamphetamine laboratories;
- (6) Create grant-in-aid opportunities for counties to fund community efforts to sustain anti-drug campaigns and community-based substance abuse prevention programs;
- (7) Appropriate funds for community adolescent drug prevention programs and community anti-drug efforts aimed at preventing ice use on the island of Hawaii;
- (8) Expand the department of public safety's duties to include coordination of drug abatement efforts on a statewide basis and make an appropriation for this responsibility;
- (9) Make an appropriation for the expansion of the Weed and Seed Program;
- (10) Establish a substance abuse treatment monitoring program requiring state agencies to collect data and assess program effectiveness and make an appropriation for this purpose;
- (11) Create a multi-agency task force to respond to the effects of ice on children and make an appropriation for expenses;
- (12) Appropriate funds for the Being Empowered and Safe Together Program on Maui; and
- (13) Appropriate funds for the KASHBOX program.

PART II

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 for adolescent substance abuse treatment programs, with priority given to establishing school-based treatment programs in all high schools, and in middle and intermediate schools with the greatest need for such services, and adolescent residential treatment programs.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 for substance abuse prevention, with priority given to drug education and awareness in the schools and community partnerships, non-school youth activities in communities with the greatest need, education and support for families and parenting women, and community mobilization.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 for adult treatment services, including family counseling, with priority

given to women of child-bearing age, pregnant women, parents of young children in the home, and Hawaiians as defined in section 10-2, Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,472,419 or so much thereof as may be necessary for fiscal year 2004-2005 for the drug courts to expand their programs, including the following:

- (1) Third Circuit (JUD 330)
 - (a) One permanent full-time equivalent (1.00 FTE) circuit court judge, one permanent full-time equivalent (1.00 FTE) judicial assistant I (SR-21A), one permanent full-time equivalent (1.00 FTE) circuit court clerk II (SR-20A), one permanent full-time equivalent (1.00 FTE) law clerk (SR-20I), and circuit court costs \$328,635
 - (b) Two permanent full-time equivalent (2.00 FTE) social worker IVs (SR-22C) and juvenile drug court costs \$188,498
 - (c) Two permanent full-time equivalent (2.00 FTE) social worker IVs (SR-22C) and adult drug court costs \$188,498

Total Third Circuit \$705,631
- (2) Second Circuit (JUD 320)
 - (a) One permanent full-time equivalent (1.00 FTE) circuit court judge, one permanent full-time equivalent (1.00 FTE) judicial assistant I (SR-21A), one permanent full-time equivalent (1.00 FTE) circuit court clerk II (SR-20A), one permanent full-time equivalent (1.00 FTE) law clerk (SR-20I), and circuit court costs \$327,555
 - (b) Two permanent full-time equivalent (2.00 FTE) drug court substance abuse counselor IIIs (SR-20C) and one permanent full-time equivalent (1.00 FTE) judicial clerk II (SR-12A) \$439,233

Total Second Circuit \$766,788

The sum appropriated shall be expended by the judiciary for purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,200,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the drug courts to expand their programs, including juvenile and family drug courts.

The sum appropriated shall be expended by the judiciary for purposes of this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the treatment of first-time nonviolent drug offenders sentenced by the court under sections 706-622.5 and 706-625, Hawaii Revised Statutes.

The sum appropriated shall be expended by the judiciary for purposes of this Act.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the canine drug interdiction program.

The sum appropriated shall be expended by the department of public safety.

SECTION 9. There is appropriated out of the environmental response revolving fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2004-2005 for a study and analysis of the effects of clandestine methamphetamine laboratories on the environment (particularly ground water), disposal of toxic waste materials found at the site and disposal of the site itself, and recommendations for action.

The sum appropriated shall be expended by the department of health.

SECTION 10. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant-in-aid to the city and county of Honolulu to fund grassroots community efforts to sustain its anti-drug campaigns; provided that no single nonprofit entity shall receive more than \$5,000 under this section; and provided further that no funds shall be expended under this section unless matched by funds from the city and county of Honolulu.

The sum appropriated shall be expended by the city and county of Honolulu.

SECTION 11. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant-in-aid to the county of Hawaii to fund grassroots community efforts to sustain its anti-drug campaigns; provided that no single nonprofit entity shall receive more than \$5,000 under this section; and provided further that no funds shall be expended under this section unless matched by funds from the county of Hawaii.

The sum appropriated shall be expended by the county of Hawaii.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$380,000 or so much thereof as may be necessary for fiscal year 2004-2005, pursuant to chapter 103F, Hawaii Revised Statutes, for community adolescent drug prevention programs on the island of Hawaii.

The sum appropriated shall be expended by the county of Hawaii.

SECTION 13. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant-in-aid to the county of Kauai to fund grassroots community efforts to sustain its anti-drug campaigns; provided that no single nonprofit entity shall receive more than \$5,000 under this section; and provided further that no funds shall be expended under this section unless matched by funds from the county of Kauai.

The sum appropriated shall be expended by the county of Kauai.

SECTION 14. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant-in-aid to the county of Maui to fund grassroots community efforts to sustain its anti-drug campaigns; provided that no single nonprofit entity shall receive more than \$5,000 under this section; and provided further that no funds shall be expended under this section unless matched by funds from the county of Maui.

The sum appropriated shall be expended by the county of Maui.

SECTION 15. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant-in-aid to the city and county of Honolulu to fund community-based substance abuse prevention programs, with priority given to drug

education and awareness in the schools, community partnerships, and non-school youth activities in communities with the greatest need.

The sum appropriated shall be expended by the city and county of Honolulu.

SECTION 16. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant-in-aid to the county of Hawaii to fund community-based substance abuse prevention programs, with priority given to drug education and awareness in the schools, community partnerships, and non-school youth activities in communities with the greatest need.

The sum appropriated shall be expended by the county of Hawaii.

SECTION 17. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant-in-aid to the county of Kauai to fund community-based substance abuse prevention programs, with priority given to drug education and awareness in the schools, community partnerships, and non-school youth activities in communities with the greatest need.

The sum appropriated shall be expended by the county of Kauai.

SECTION 18. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant-in-aid to the county of Maui to fund community-based substance abuse prevention programs, with priority given to drug education and awareness in the schools, community partnerships, and non-school youth activities in communities with the greatest need.

The sum appropriated shall be expended by the county of Maui.

SECTION 19. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005, to be matched with federal funds, for community anti-drug efforts aimed at preventing crystal methamphetamine use.

The sum appropriated shall be expended by the county of Hawaii.

SECTION 20. There is appropriated out of the general revenues of the State of Hawaii the sum of \$125,000 or so much thereof as may be necessary for fiscal year 2004-2005 for a needs assessment for adult substance abuse treatment services or the implementation of the substance abuse treatment monitoring program, and for coordination of community-based drug abatement and mobilization efforts.

The sum appropriated shall be expended by the department of public safety.

SECTION 21. There is appropriated out of the emergency budget and reserve fund the sum of \$350,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the expansion of the Weed and Seed Program to other communities that meet federal guidelines for receiving federal funding under the Weed and Seed Program.

There shall be a steering committee for the Weed and Seed Program. A representative of the department of the attorney general shall chair the steering committee. The steering committee shall advise the Weed and Seed Program regarding the disbursements of the funds.

The Weed and Seed Program shall receive legislative appropriations only if an account is established for legislative appropriations, federal funds, and private contributions for the Program.

The sum appropriated shall be expended by the department of the attorney general.

SECTION 22. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 for a grant-in-aid to the Being Empowered and Safe Together Reintegration Program for staffing, equipment, and other operating expenses for the establishment and continuation of services to provide a supportive environment that assists former incarcerated individuals returning to the community to remain free from the influences, temptations, and dangers related to illegal drugs.

The sum appropriated shall be expended by the department of public safety.

PART III

SECTION 23. The legislature finds that effective crime reduction depends in part upon the effectiveness of drug treatment programs. The effectiveness of drug treatment programs can only be assessed through the gathering of pertinent data.

The purpose of this part is to require the department of health, the office of youth services, the department of public safety, and the judiciary to collect data from private providers of substance abuse treatment services that receive public funds and state agencies that provide direct treatment services.

SECTION 24. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part XVI to be appropriately designated and to read as follows:

“§321-A Substance abuse treatment monitoring program. (a) To determine the effectiveness of substance abuse treatment services and maintain accurate numbers of individuals receiving publicly funded substance abuse treatment, the department shall establish a statewide substance abuse treatment monitoring program to collect the following information from all treatment providers accredited by the department, pursuant to section 321-198, on every individual who receives substance abuse treatment paid by public funds. Treatment providers shall report admission and discharge data, as determined by the department, with a final annual report due no later than sixty days after the close of the fiscal year, which shall include:

- (1) An accurate count of all admissions and discharges during the reporting period;
- (2) An unduplicated count of individuals served by each treatment provider;
- (3) Demographic data on each individual as determined by the department, which may include age, race, ethnicity, employment status, source of payment, source of referral to treatment, length of treatment, and the primary substance for which treatment was sought;
- (4) Data on the number of individuals who were discharged due to successful completion of treatment and the reasons individuals withdrew from treatment during the reporting period;
- (5) Six-month follow-up data on persons who were discharged due to successful completion of treatment, reporting on criteria for measurement of successful treatment as determined by the department; and
- (6) Any other information deemed relevant by the department to assess the effectiveness of treatment on each individual.

(b) The department shall establish criteria to measure the success of treatment for individuals and establish criteria to determine whether the treatment provider is achieving success in treating individuals with substance abuse. The

department shall include in the contract with the treatment provider all criteria to determine whether the treatment provider is achieving success in treating individuals with substance abuse.

(c) The department shall include the information under subsection (a) as part of the annual report to the legislature under section 321-195.

(d) This section shall not be construed to abrogate an individual's right to privacy. The department shall implement sufficient protections to ensure that the identity of a recipient of substance abuse treatment services remains strictly confidential and that aggregate data collected pursuant to this section is used solely for the purpose of this section."

SECTION 25. Chapter 352D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§352D- Substance abuse treatment monitoring program. (a) To determine the effectiveness of substance abuse treatment services and maintain accurate numbers of individuals receiving publicly funded substance abuse treatment, the office shall comply with the requirements of the statewide substance abuse treatment monitoring program established by the department of health under section 321-A. The office shall collect data in accordance with section 321-A from any provider of substance abuse treatment that provides substance abuse treatment to youths served through public funds administered by the office.

(b) The office shall include in the contract with any treatment provider all criteria established by the department of health pursuant to section 321-A to determine whether the treatment provider is achieving success in treating individuals with substance abuse.

(c) The office shall include the information collected under subsection (a) as part of the annual report submitted pursuant to section 352D-6.

(d) This section shall not be construed to abrogate an individual's right to privacy. The office shall implement sufficient protections to ensure that the identity of a recipient of substance abuse treatment services remains strictly confidential and that aggregate data collected pursuant to this section is used solely for the purpose of this section."

SECTION 26. Chapter 601, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§601- Substance abuse treatment monitoring program. (a) To determine the effectiveness of substance abuse treatment services and maintain accurate numbers of individuals receiving publicly funded substance abuse treatment, the judiciary shall comply with the requirements of the statewide substance abuse treatment monitoring program established under section 321-A. The judiciary shall collect data in accordance with section 321-A from any circuit court, adult probation, and any provider of substance abuse treatment that provides substance abuse treatment to persons served through public funds administered by the judiciary.

(b) The judiciary shall include in the contract with any treatment provider all criteria established by the department of health pursuant to section 321-A to determine whether the treatment provider is achieving success in treating individuals with substance abuse.

(c) The judiciary shall include the information collected under subsection (a) as part of the annual report submitted pursuant to section 601-2.

(d) This section shall not be construed to abrogate an individual's right to privacy. The judiciary shall implement sufficient protections to ensure that the identity of a recipient of substance abuse treatment services remains strictly confi-

dential and that aggregate data collected pursuant to this section is used solely for the purpose of this section.”

SECTION 27. Section 353G-13, Hawaii Revised Statutes, is amended to read as follows:

“[§353G-13] Reporting and implementation[.]; substance abuse treatment monitoring program. (a) Every assessment program, treatment program, correctional center or facility, and parole agency that provides services pursuant to this chapter or that otherwise supervises a person or issues an order pursuant to this chapter shall keep case-specific records and aggregate data and statistics as may be required by the department of health[.] and which shall be required by the statewide substance abuse treatment monitoring program under section 321-A. The department of public safety shall collect data in accordance with section 321-A from any assessment program, treatment program, treatment provider, correctional center or facility, and parole agency that provides substance abuse treatment to persons served through public funds administered by the department of public safety. The department of public safety shall implement sufficient protections to ensure that the identity of a recipient of substance abuse treatment services remains strictly confidential and that aggregate data collected pursuant to this section is used solely for the purpose of this section.

This subsection shall not be construed to abrogate an individual’s right to privacy.

(b) The department of public safety shall include in the contract with any treatment provider all criteria established by the department of health pursuant to section 321-A to determine whether the treatment provider is achieving success in treating individuals with substance abuse.

[(b)] (c) The department of public safety, in conjunction with the department of health, shall report on an annual basis to the legislature and to the governor, its findings concerning the need for and implementation of the various provisions of this chapter. The report shall include information collected under subsection (a) and a synopsis of information or data necessary to determine the impact, utility, and cost-benefits of the provisions of this chapter.

[(e)] (d) The department of public safety, in conjunction with the department of health, shall establish an advisory board that shall be comprised of judges, prosecutors, defense attorneys, adult probation officials, parole officials, correctional officials, representatives of assessment programs and treatment programs, and individuals working in licensed alcohol and other drug abuse treatment facilities who are past consumers of treatment services. The advisory board shall meet periodically to discuss the provisions, implementation, and evaluation of this chapter, and to make recommendations to the department of health.

[(d)] (e) Except as provided in this chapter, all data, information, or records kept or compiled pursuant to this section shall be deemed to be government records for the purposes of chapter 92F.”

SECTION 28. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005 for three full-time equivalent positions in the alcohol and drug abuse division of the department of health to collect data and evaluate outcomes as required by this part, and for a needs assessment for adult substance abuse treatment services or the implementation of the substance abuse treatment monitoring program.

The sum appropriated shall be expended by the department of health for the purposes of this part.

PART IV

SECTION 29. The department of health shall submit an annual report to the legislature prior to the convening of each regular session, beginning with the regular session of 2005, pursuant to section 321-195, Hawaii Revised Statutes, that shall include progress in the implementation of the statewide substance abuse plan and on the following:

- (1) Progress toward establishing uniform evaluation criteria with benchmark goals to measure the success of substance abuse treatment programs funded through public funds;
- (2) Specific information compiled through the new statewide substance abuse treatment monitoring program on individuals served through public funds;
- (3) Progress toward requiring purchase of services contractors that receive public funds for substance abuse treatment programs to compile data, implement standard evaluation criteria, and performance goals;
- (4) Analysis of the effectiveness of substance abuse treatment programs in reducing costs for government services in other areas; and
- (5) Progress toward implementing the specific programs and services appropriated under this Act.

PART V

SECTION 30. The task force recommended that a multi-agency task force be created to analyze the effects of ice use by children and the effects upon children whose household members use ice, to be known as the drug endangered child protection program task force. The purpose of the task force shall be to develop a first response program by law enforcement and child welfare workers to protect the child who is discovered in a drug house or clandestine methamphetamine laboratory (See Final Report of Task Force, pp. 29-32). The legislature adopts this recommendation. The department of human services shall be the lead agency to coordinate the efforts of the department of health, department of human services, department of the attorney general, department of education, county police departments, county prosecutors, the judiciary, and community agencies to develop the drug endangered child protection program.

The task force may seek the advice and recommendations of private sources, including but not limited to physicians, hospitals, and clinics.

The department of human services shall report to the legislature on findings and recommendations, including proposed legislation, no later than twenty days prior to the convening of the regular session of 2005.

SECTION 31. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the multi-agency task force created under this part.

The sum appropriated shall be expended by the department of human services for purposes of this part.

PART VI

SECTION 32. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 for staffing, equipment, and other operating expenses for the expansion of the KASHBOX substance abuse treatment program at the Waiawa correctional facility.

ACT 41

The sum appropriated shall be expended by the department of public safety for the purposes of this part.

PART VII

SECTION 33. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 34. In codifying the new section and cross-references thereto added in part III of this Act, the revisor of statutes shall substitute the appropriate section number for the letter used in designating the new section in this Act.

SECTION 35. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 36. This Act shall take effect on July 1, 2004.

(Became law on April 30, 2004, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 41

H.B. NO. 1800

A Bill for an Act Relating to the State Budget.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 2004.

SECTION 2. This Act amends Act 200, Session Laws of Hawaii 2003, and other appropriations and authorizations effective during fiscal biennium 2003-2005.

SECTION 3. Act 200, Session Laws of Hawaii 2003, is amended by amending section 3 to read as follows:

“SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2003, and ending June 30, 2005. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each fiscal year, except as provided elsewhere in this Act, or as provided by general law.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
A. ECONOMIC DEVELOPMENT							
1. BED101 - BUSINESS DEVELOPMENT AND MARKETING							
	OPERATING		BED	15.00* 1,655,276A		15.00* 1,725,391A	
			BED		N	250,000N	
	INVESTMENT CAPITAL		BED		C	500,000C	
2. BED102 - BUSINESS SERVICES							
	OPERATING		BED	12.00* 1,453,865A		13.00* 1,541,665A	
			BED			B	
				2.00*		*	
			BED	963,832W		1,821,915W	
3. BED107 - FOREIGN TRADE ZONE							
	OPERATING		BED	21.00* 1,951,051B		19.00* 1,890,883B	
	INVESTMENT CAPITAL		BED		C	250,000C	
			BED		N	1,900,000N	
4. BED120 - ENERGY AND NATURAL RESOURCES							
	OPERATING		BED	12.00* 1,160,057A		11.00* 1,117,875A	
			BED			3,529,193N	
5. BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT							
	OPERATING		BED	32.00* 1,935,045A		32.00* 1,936,212A	
6. BED113 - TOURISM							
	OPERATING		BED	25,000A 3.00*		3.00* 109,000,000B	
	INVESTMENT CAPITAL		BED		C	3,700,000C	
7. AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE							
	OPERATING		AGR	10.00* 1,016,965B		10.00* 1,025,173B	
			AGR			5,000,000W	
8. AGR122 - PLANT, PEST, AND DISEASE CONTROL							
	OPERATING		AGR	94.00* 4,485,502A		85.00* 4,279,096A	
			AGR			265,349N	
			AGR	324,581N 363,600T		488,600T	
				1.00*		*	
			AGR	171,165U		141,549U	
			AGR	58,360W		58,360W	
9. AGR131 - RABIES QUARANTINE							
	OPERATING		AGR	45.00* 3,025,264B		42.00* 2,838,542B	
10. AGR132 - ANIMAL DISEASE CONTROL							
	OPERATING		AGR	23.50* 1,155,974A		22.50* 1,130,000A	
			AGR			337,130U	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
11. LNR172 - FORESTRY - PRODUCTS DEVELOPMENT							
	OPERATING		LNR	19.00*		19.00*	
			LNR	722,154A		722,154A	
			LNR	700,000B		700,000B	
			LNR	3.00*		2.50*	
			LNR	425,193N		412,425N	
12. AGR151 - QUALITY AND PRICE ASSURANCE							
	OPERATING		AGR	29.00*		27.00*	
			AGR	1,406,243A		1,346,060A	
			AGR	2.00*		2.00*	
			AGR	262,492B		262,492B	
			AGR	52,424N		52,424N	
			AGR	300,000T		300,000T	
			AGR	447,132W		377,060W	
13. AGR171 - AGRICULTURAL DEVELOPMENT AND MARKETING							
	OPERATING		AGR	19.00*		18.00*	
			AGR	1,367,296A		1,333,087A	
			AGR	75,000N		75,000N	
14. AGR141 - AGRICULTURAL RESOURCE MANAGEMENT							
	OPERATING		AGR	2.00*		4.00*	
			AGR	253,401A		361,651A	
			AGR	3.00*		3.00*	
			AGR	390,907B		380,551B	
			AGR	10.00*		10.00*	
	INVESTMENT CAPITAL		AGR	1,064,811W		1,154,265W	
			AGR	2,550,000C		4,350,000C	
			AGR	150,000N		3,250,000N	
15. AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH							
	OPERATING		AGR	1.00*		1.00*	
			AGR	735,279A		685,279A	
	INVESTMENT CAPITAL		AGR	3,396,826W		3,346,826W	
			AGR	C		150,000C	
16. AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE							
	OPERATING		AGR	29.00*		28.00*	
			AGR	1,510,188A		1,518,600A	
17. LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT							
	OPERATING		LNR	9.00*		9.00*	
			LNR	762,186A		674,327A	
			LNR	300,000B		314,193B	
			LNR	308,210N		308,210N	
18. AGR153 - AQUACULTURE DEVELOPMENT PROGRAM							
	OPERATING		AGR	8.00*		8.00*	
			AGR	490,996A		490,996A	
			AGR	30,000B		30,000B	
			AGR	78,747N		78,747N	
	INVESTMENT CAPITAL		AGR	500,000C		C	
19. BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION							
	OPERATING		BED	1.50*		1.50*	
			BED	1,178,663A		1,046,884A	
			BED	1.50*		1.50*	
			BED	2,080,223B		2,218,427B	
			BED	2,006,787N		22,779,057N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		INVESTMENT CAPITAL	BED	1,500,000W		1,500,000W	
			BED		C	2,000,000C	
			BED		E	8,405,000E	
20.	BED145 - HAWAII STRATEGIC DEVELOPMENT CORPORATION	OPERATING	BED			153,297A	
			BED	427,262W			
21.	BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY	OPERATING	BED	597,510A		356,624A	
			BED	2,607,180B		3,619,956B	
			BED	6,550,213N		6,800,000N	
		INVESTMENT CAPITAL	BED		C	840,000C	
22.	LNR141 - WATER AND LAND DEVELOPMENT	OPERATING	LNR	3.00*		3.00*	
			LNR	275,779A		275,779A	
			LNR	110,000W		110,000W	
		INVESTMENT CAPITAL	LNR	1,400,000C		18,590,000C	
23.	BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY	OPERATING	BED	2.00*		2.00*	
			BED	139,537A		139,537A	
			BED	2,500,000B		2,500,000B	
			BED	207,000W		605,000W	
		INVESTMENT CAPITAL	BED	1,312,000C		9,019,000C	
			BED		E	20,000,000E	
			BED		N	450,000N	
24.	BED151 - ALOHA TOWER DEVELOPMENT CORPORATION	OPERATING	BED	1.00*		1.00*	
				1,525,689B		1,525,689B	

B. EMPLOYMENT

1. LBR111 - PLACEMENT SERVICES

OPERATING	LBR	4.30*	4.30*
	LBR	282,455A	282,455A
	LBR	9,800,412B	9,731,143B
	LBR	119.20*	114.70*
	LBR	49,182,640N	48,526,060N
	LBR	1,316,913U	1,330,287U

2. LBR135 - WORKFORCE DEVELOPMENT COUNCIL

OPERATING	LBR	3.00*	3.00*
	LBR	174,335A	274,335A
	LBR	432,921N	426,421N

3. LBR143 - OCCUPATIONAL SAFETY AND HEALTH

OPERATING	LBR	43.00*	38.50*
	LBR	2,156,437A	1,897,681A
	LBR	25.00*	23.50*
	LBR	1,821,121N	2,005,944N

4. LBR152 - WAGE STANDARDS AND FAIR EMPLOYMENT PRACTICES

OPERATING	LBR	27.35*	24.50*
	LBR	1,198,926A	1,122,043A
	LBR	53,131U	53,131U

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
5. LBR153 - CIVIL RIGHTS COMMISSION							
	OPERATING		LBR	21.50*		21.50*	
				1,117,684A		1,080,220A	
			LBR	4.00*		4.00*	
				467,646N		458,988N	
6. LBR161 - PUBLIC AND PRIVATE EMPLOYMENT							
	OPERATING		LBR	2.00*		1.00*	
				459,538A		424,434A	
7. LBR171 - UNEMPLOYMENT COMPENSATION							
	OPERATING		LBR	166,610,592B		166,610,592B	
				231.90*		210.55*	
			LBR	14,663,088N		14,035,689N	
8. LBR183 - DISABILITY COMPENSATION							
	OPERATING		LBR	112.00*		111.00*	
				4,868,853A		4,868,853A	
				4.00*		4.00*	
			LBR	23,675,713B		23,675,713B	
9. HMS802 - VOCATIONAL REHABILITATION							
	OPERATING		HMS	26.57*		26.36*	
				3,865,138A		3,819,614A	
				93.93*		92.64*	
			HMS	10,719,862N		10,745,562N	
	INVESTMENT CAPITAL		HMS	1,330,200W		1,330,200W	
			HMS	500,000C		1,000,000C	
10. LBR901 - DLIR - DATA GATHERING, RESEARCH, AND ANALYSIS							
	OPERATING		LBR	8.88*		8.88*	
				691,653A		691,653A	
				29.12*		24.12*	
			LBR	2,398,369N		2,241,769N	
11. LBR902 - GENERAL ADMINISTRATION							
	OPERATING		LBR	27.66*		28.46*	
				1,459,237A		1,440,145A	
				36.68*		32.78*	
			LBR	2,930,195N		2,697,402N	
12. LBR903 - OFFICE OF COMMUNITY SERVICES							
	OPERATING		LBR	4.00*		4.00*	
				4,461,565A		4,646,565A	
				3.00*		1.00*	
	INVESTMENT CAPITAL		LBR	5,909,960N		5,756,486N	
			LBR	3,825,000C		300,000C	
13. LBR812 - LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD							
	OPERATING		LBR	12.00*		12.00*	
				675,316A		675,316A	
C. TRANSPORTATION FACILITIES							
1. TRN102 - HONOLULU INTERNATIONAL AIRPORT							
	OPERATING		TRN	648.75*		606.00*	
				103,919,080B		89,874,024B	
			TRN	4,415,000N		2,600,000N	
	INVESTMENT CAPITAL		TRN	700,000B		525,000B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			TRN	3,800,000E		32,250,000E	
			TRN	6,000,000N		42,725,000N	
			TRN	2,300,000X			X
2.	TRN104	GENERAL AVIATION					
				30.00*		30.00*	
	OPERATING		TRN	5,124,225B		5,075,932B	
	INVESTMENT CAPITAL		TRN	50,000B		50,000B	
			TRN			400,000N	
3.	TRN111	HILO INTERNATIONAL AIRPORT					
				80.00*		79.00*	
	OPERATING		TRN	11,416,928B		14,593,718B	
	INVESTMENT CAPITAL		TRN	750,000B		100,000B	
			TRN	300,000E		E	
			TRN	600,000N		600,000N	
4.	TRN114	KONA INTERNATIONAL AIRPORT AT KEAHOLE					
				94.00*		84.00*	
	OPERATING		TRN	13,125,007B		10,196,577B	
			TRN	495,000N		693,000N	
	INVESTMENT CAPITAL		TRN	1,500,000E		E	
5.	TRN116	WAIMEA-KOHALA AIRPORT					
				2.00*		2.00*	
	OPERATING		TRN	493,178B		271,978B	
6.	TRN118	UPOLU AIRPORT					
	OPERATING		TRN	62,889B		28,389B	
7.	TRN131	KAHULUI AIRPORT					
				172.00*		154.00*	
	OPERATING		TRN	21,220,868B		23,060,363B	
	INVESTMENT CAPITAL		TRN	B		1,000,000B	
			TRN	7,500,000E		17,500,000E	
			TRN	14,120,000N		15,395,000N	
8.	TRN133	HANA AIRPORT					
				2.00*		1.00*	
	OPERATING		TRN	1,105,272B		92,596B	
9.	TRN135	KAPALUA AIRPORT					
				6.00*		6.00*	
	OPERATING		TRN	1,381,018B		876,018B	
10.	TRN141	MOLOKAI AIRPORT					
				15.00*		14.00*	
	OPERATING		TRN	1,994,732B		2,640,942B	
	INVESTMENT CAPITAL		TRN	E		300,000E	
11.	TRN143	KALAUPAPA AIRPORT					
				1.00*		1.00*	
	OPERATING		TRN	350,727B		50,727B	
12.	TRN151	LANAI AIRPORT					
				10.00*		10.00*	
	OPERATING		TRN	2,106,132B		1,698,702B	
	INVESTMENT CAPITAL		TRN	E		150,000E	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
13.	TRN161	LIHUE AIRPORT					
	OPERATING		TRN	108.00*		103.00*	
			TRN	12,437,656B		12,798,238B	
	INVESTMENT CAPITAL		TRN	577,500N			
			TRN	2,500,000B			B
			TRN	9,000,000E			E
14.	TRN163	PORT ALLEN AIRPORT					
	OPERATING		TRN	1,860B		1,860B	
15.	TRN195	AIRPORTS ADMINISTRATION					
	OPERATING		TRN	117.00*		106.00*	
			TRN	94,107,898B		163,755,844B	
	INVESTMENT CAPITAL		TRN	10,025,000B		9,125,000B	
			TRN	4,700,000N		5,620,000N	
16.	TRN301	HONOLULU HARBOR					
	OPERATING		TRN	123.00*		120.00*	
			TRN	15,279,434B		18,970,766B	
	INVESTMENT CAPITAL		TRN	250,000B		16,550,000B	
			TRN	34,500,000E		31,500,000E	
17.	TRN303	KALAELOA BARBERS POINT HARBOR					
	OPERATING		TRN	3.00*		3.00*	
			TRN	536,987B		659,291B	
	INVESTMENT CAPITAL		TRN			400,000B	
18.	TRN305	KEWALO BASIN					
	OPERATING		TRN	2.00*		2.00*	
			TRN	978,555B		1,259,555B	
19.	TRN311	HILO HARBOR					
	OPERATING		TRN	15.00*		15.00*	
			TRN	1,803,631B		1,967,613B	
	INVESTMENT CAPITAL		TRN	B		575,000B	
20.	TRN313	KAWAIHAE HARBOR					
	OPERATING		TRN	1.00*		1.00*	
			TRN	770,521B		548,422B	
21.	TRN331	KAHULUI HARBOR					
	OPERATING		TRN	16.00*		16.00*	
			TRN	2,176,650B		2,315,650B	
	INVESTMENT CAPITAL		TRN	1,500,000E		E	
22.	TRN341	KAUNAKAKAI HARBOR					
	OPERATING		TRN	1.00*		1.00*	
			TRN	612,060B		462,060B	
23.	TRN361	NAWILIWILI HARBOR					
	OPERATING		TRN	15.00*		15.00*	
			TRN	1,733,652B		2,047,798B	
	INVESTMENT CAPITAL		TRN	300,000B		B	
24.	TRN363	PORT ALLEN HARBOR					
	OPERATING		TRN	1.00*		1.00*	
			TRN	332,836B		293,836B	
25.	TRN351	KAUMALAPAU HARBOR					
	OPERATING		TRN	257,000B		257,000B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
26.	TRN395	- HARBORS ADMINISTRATION					
	OPERATING		TRN	62.00*		58.00*	
	INVESTMENT CAPITAL		TRN	42,752,096B		39,931,367B	
			TRN	9,275,000B		1,915,000B	
			TRN	2,000,000N			N
27.	TRN501	- OAHU HIGHWAYS					
	OPERATING		TRN	264.00*		233.00*	
			TRN	44,368,085B		43,535,244B	
			TRN	800,000N		800,000N	
	INVESTMENT CAPITAL		TRN	B		5,000,000B	
			TRN	42,995,000E		12,755,000E	
			TRN	43,020,000N		36,220,000N	
			TRN	X		6,200,000X	
28.	TRN511	- HAWAII HIGHWAYS					
	OPERATING		TRN	126.00*		126.00*	
	INVESTMENT CAPITAL		TRN	19,238,820B		19,415,583B	
			TRN	3,400,000E		1,140,000E	
			TRN	1,200,000N		2,160,000N	
			TRN	1,000,000X			X
29.	TRN531	- MAUI HIGHWAYS					
	OPERATING		TRN	79.50*		65.00*	
	INVESTMENT CAPITAL		TRN	14,931,134B		15,121,304B	
			TRN	12,745,000E		18,515,000E	
			TRN	34,340,000N		70,040,000N	
			TRN	1,500,000X			X
30.	TRN541	- MOLOKAI HIGHWAYS					
	OPERATING		TRN	12.00*		12.00*	
	INVESTMENT CAPITAL		TRN	1,007,378B		3,621,281B	
			TRN	365,000E			E
			TRN	560,000N			N
31.	TRN551	- LANAI HIGHWAYS					
	OPERATING		TRN	4.00*		4.00*	
			TRN	3,497,446B		295,413B	
32.	TRN561	- KAUAI HIGHWAYS					
	OPERATING		TRN	51.00*		51.00*	
	INVESTMENT CAPITAL		TRN	11,214,239B		10,840,562B	
			TRN	940,000E		2,425,000E	
			TRN	2,160,000N		2,060,000N	
33.	TRN595	- HIGHWAYS ADMINISTRATION					
	OPERATING		TRN	80.00*		77.00*	
			TRN	66,860,341B		69,098,699B	
			TRN	8,908,865N		8,908,865N	
	INVESTMENT CAPITAL		TRN	8,500,000B		8,500,000B	
			TRN	3,314,000E		9,024,000E	
			TRN	9,961,000N		34,001,000N	
34.	TRN597	- HIGHWAY SAFETY					
	OPERATING		TRN	36.00*		31.00*	
			TRN	5,922,255B		5,777,651B	
			TRN	3.00*		9.00*	
			TRN	3,577,276N		3,081,088N	
35.	TRN995	- GENERAL ADMINISTRATION					
				99.00*		94.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
	OPERATING		TRN	12,551,040B		13,211,973B	
			TRN	2,138,000N		2,200,000N	
			TRN	112,500R		112,500R	

D. ENVIRONMENTAL PROTECTION

1. HTH840 - ENVIRONMENTAL MANAGEMENT

				55.00*		54.00*	
	OPERATING		HTH	3,111,909A		3,088,459A	
				50.20*		50.20*	
			HTH	8,343,064B		30,369,314B	
				46.40*		46.40*	
			HTH	6,082,129N		6,082,129N	
				52.40*		52.40*	
	INVESTMENT CAPITAL		HTH	97,195,676W		97,195,676W	
			HTH	3,697,000C		3,697,000C	
			HTH	18,482,000N		18,482,000N	

2. AGR846 - PESTICIDES

				16.00*		16.00*	
	OPERATING		AGR	732,008A		732,008A	
			AGR	380,392N		380,392N	
				4.00*		4.00*	
			AGR	715,063W		715,063W	

3. LNR401 - AQUATIC RESOURCES

				27.00*		27.00*	
	OPERATING		LNR	2,241,259A		2,233,284A	
				1.00*		1.00*	
			LNR	1,196,081N		1,185,651N	

4. LNR402 - FORESTS AND WILDLIFE RESOURCES

				56.00*		52.00*	
	OPERATING		LNR	3,079,295A		4,976,736A	
			LNR	1,017,735B		3,017,735B	
				7.00*		6.50*	
			LNR	5,119,532N		5,057,124N	

5. LNR404 - WATER RESOURCES

				21.00*		19.00*	
	OPERATING		LNR	1,620,977A		1,505,105A	
				3.00*		3.00*	
			LNR	342,766B		342,766B	
	INVESTMENT CAPITAL		LNR	C		431,000C	

6. LNR405 - CONSERVATION AND RESOURCES ENFORCEMENT

				97.50*		88.00*	
	OPERATING		LNR	4,856,925A		4,627,577A	
				18.00*		17.00*	
			LNR	1,320,442B		1,299,346B	
				2.50*		1.00*	
			LNR	646,473N		592,245N	
				1.00*		1.00*	
			LNR	17,729W		17,729W	

7. LNR407 - NATURAL AREA RESERVES AND MANAGEMENT

				27.00*		22.00*	
	OPERATING		LNR	1,228,511A		1,094,015A	
			LNR	3,300,000B		3,300,000B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
8. HTH850 - POLICY DEVELOPMENT, COORINATION, AND ANALYSIS FOR NATURAL PHYSICAL ENVIRONMENT				5.00*		5.00*	
	OPERATING		HTH	283,122A		283,122A	
9. LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT				34.00*		32.00*	
	OPERATING		LNR	1,855,957A		1,779,806A	
			LNR	4.00*		3.00*	
	INVESTMENT CAPITAL		LNR	471,750B		464,143B	
			LNR	1,750,000C		4,250,000C	
10. HTH849 - ENVIRONMENTAL HEALTH ADMINISTRATION				15.50*		15.50*	
	OPERATING		HTH	768,653A		782,903A	
			HTH	17.50*		17.50*	
			HTH	1,598,129N		3,098,129N	
			HTH	10.00*		10.00*	
			HTH	2,941,054W		2,941,054W	
E. HEALTH							
1. HTH101 - TUBERCULOSIS CONTROL				33.00*		34.00*	
	OPERATING		HTH	2,285,494A		2,511,470A	
			HTH	2.00*		2.00*	
			HTH	1,318,876N		1,318,876N	
2. HTH111 - HANSEN'S DISEASE SERVICES				69.00*		68.00*	
	OPERATING		HTH	4,448,744A		4,448,744A	
			HTH	3.00*		3.00*	
			HTH	695,669N		695,669N	
3. HTH121 - STD/AIDS PREVENTION SERVICES				15.00*		15.00*	
	OPERATING		HTH	5,463,945A		5,453,109A	
			HTH	4.50*		4.50*	
			HTH	4,672,303N		4,672,303N	
4. HTH131 - DISEASE OUTBREAK CONTROL				19.00*		20.00*	
	OPERATING		HTH	1,370,236A		1,446,616A	
			HTH	22.00*		22.00*	
			HTH	12,588,085N		12,505,165N	
5. HTH141 - DENTAL DISEASES				25.60*		25.60*	
	OPERATING		HTH	1,610,135A		1,610,135A	
6. HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM				13.00*		13.00*	
	OPERATING		HTH	38,027,956A		38,115,616A	
			HTH	3.00*		3.00*	
			HTH	1,356,757N		3,494,122N	
7. HTH501 - DEVELOPMENTAL DISABILITIES				243.75*		238.75*	
	OPERATING		HTH	38,479,541A		40,176,740A	

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			HTH	3.00*		3.00*	
			HTH	1,000,000B		1,000,000B	
8.	HTH530 - CHILDREN WITH SPECIAL HEALTH NEEDS SERVICES						
	OPERATING		HTH	121.75*		120.75*	
			HTH	9,742,839A		9,682,748A	
			HTH	3.00*		3.00*	
			HTH	1,273,228B		1,109,282B	
			HTH	40.00*		40.00*	
			HTH	4,834,427N		4,222,327N	
9.	HTH165 - WOMEN, INFANTS AND CHILDREN (WIC) SERVICES						
	OPERATING		HTH	116.50*		116.50*	
			HTH	33,677,385N		29,660,385N	
10.	HTH550 - MATERNAL AND CHILD HEALTH SERVICES						
	OPERATING		HTH	18.00*		18.00*	
			HTH	19,353,269A		17,349,107A	
			HTH	300,000B		300,000B	
			HTH	22.50*		22.50*	
			HTH	5,676,089N		5,914,420N	
			HTH	1.00*		1.00*	
			HTH	750,000U		750,000U	
11.	HTH180 - CHRONIC DISEASE MANAGEMENT AND CONTROL						
	OPERATING		HTH	20.80*		19.80*	
			HTH	1,117,554A		1,057,442A	
			HTH	18,000B		18,000B	
			HTH	3,362,821N		3,362,821N	
12.	HTH570 - COMMUNITY HEALTH NURSING						
	OPERATING		HTH	442.00*		443.00*	
			HTH	14,401,062A		14,435,098A	
			HTH	90,720B		90,720B	
13.	HTH595 - HEALTH RESOURCES ADMINISTRATION						
	OPERATING		HTH	32.00*		27.00*	
			HTH	3,653,656A		3,375,877A	
			HTH	2.00*		2.00*	
			HTH	52,842,603B		52,998,860B	
			HTH	6.50*		6.50*	
	INVESTMENT CAPITAL		HTH	817,504N		817,362N	
			HTH	750,000C		3,220,000C	
14.	HTH210 - HAWAII HEALTH SYSTEMS CORPORATION						
	OPERATING		HTH	31,220,000A		27,848,469A	
			HTH	2,836.25*		2,836.25*	
			HTH	260,637,937B		325,637,937B	
	INVESTMENT CAPITAL		HTH	14,171,000C		34,425,000C	
15.	SUB601 - PRIVATE HOSPITALS AND MEDICAL SERVICES						
16.	HTH420 - ADULT MENTAL HEALTH - OUTPATIENT						
	OPERATING		HTH	226.00*		192.50*	
			HTH	49,591,759A		59,703,493A	
			HTH	2,507,430B		3,507,430B	
			HTH	1,620,229N		1,643,030N	

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
17.	HTH430	- ADULT MENTAL HEALTH - INPATIENT					
	OPERATING		HTH	561.50*		627.50*	
				43,392,741A		46,672,781A	
18.	HTH440	- ALCOHOL AND DRUG ABUSE					
	OPERATING		HTH	22.00*		22.00*	
			HTH	9,192,364A		8,892,364A	
			HTH	150,000B		150,000B	
			HTH	6.00*		6.00*	
			HTH	10,859,867N		10,859,867N	
19.	HTH460	- CHILD AND ADOLESCENT MENTAL HEALTH					
	OPERATING		HTH	171.00*		169.00*	
			HTH	62,987,235A		55,692,421A	
			HTH	7,488,706B		7,488,706B	
			HTH	693,203N		731,138N	
			HTH	2,250,000U		2,250,000U	
20.	HTH495	- BEHAVIORAL HEALTH SERVICES ADMINISTRATION					
	OPERATING		HTH	65.00*		65.00*	
			HTH	7,435,392A		7,509,802A	
			HTH	443,502N		1,504,499N	
21.	HTH610	- ENVIRONMENTAL HEALTH SERVICES					
	OPERATING		HTH	139.00*		139.00*	
			HTH	6,485,374A		6,485,374A	
			HTH	7.00*		8.00*	
			HTH	707,693B		763,463B	
			HTH	7.00*		7.00*	
			HTH	515,230N		474,682N	
			HTH	2.00*		2.00*	
			HTH	74,974U		74,974U	
22.	HTH710	- STATE LABORATORY SERVICES					
	OPERATING		HTH	86.00*		86.00*	
			HTH	5,148,178A		5,148,178A	
23.	HTH720	- MEDICAL FACILITIES - STDS, INSPECTION, AND LICENSING					
	OPERATING		HTH	14.40*		19.40*	
			HTH	997,193A		1,205,664A	
			HTH	B		356,000B	
			HTH	20.70*		20.70*	
			HTH	1,559,994N		1,559,994N	
24.	HTH906	- COMPREHENSIVE HEALTH PLANNING					
	OPERATING		HTH	8.00*		8.00*	
			HTH	477,463A		477,463A	
			HTH	29,000B		39,000B	
25.	HTH760	- HEALTH STATUS MONITORING					
	OPERATING		HTH	28.00*		27.00*	
			HTH	1,484,388A		1,448,318A	
			HTH	250,000B		250,000B	
			HTH	2.00*		2.00*	
			HTH	397,214N		397,214N	
26.	HTH905	- POLICY DEVELOPMENT AND ADVOCACY FOR DEVELOPMENTAL DISABILITIES					
	OPERATING		HTH	1.50*		1.50*	
			HTH	95,002A		95,002A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			HTH	6.50* 433,728N		6.50* 450,000N	
27.		HTH907 - GENERAL ADMINISTRATION					
	OPERATING		HTH	115.50* 7,106,304A		117.50* 7,095,391A	
			HTH	321,060N		1,304,909N	
F. SOCIAL SERVICES							
1.		HMS301 - CHILD WELFARE SERVICES					
	OPERATING		HMS	264.44* 20,336,742A		264.44* 20,336,742A	
			HMS	450,000B		450,000B	
				187.06* 26,110,567N		187.06* 26,110,567N	
2.		HMS302 - CHILD CARE SERVICES					
	OPERATING		HMS	25.00* 1,139,110A		23.00* 1,080,778A	
			HMS	1.00* 5,606,896N		1.00* 5,593,277N	
3.		HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS					
	OPERATING		HMS	30,579,126A		36,827,090A	
			HMS	14,681,586N		15,884,108N	
4.		HMS305 - CHILD CARE PAYMENTS					
	OPERATING		HMS	22,411,811A		22,411,811A	
			HMS	39,531,967N		39,531,967N	
5.		HMS501 - YOUTH SERVICES ADMINISTRATION					
	OPERATING		HMS	22.00* 1,169,532A		21.00* 1,123,796A	
			HMS	4,475,940N		4,475,940N	
	INVESTMENT CAPITAL		HMS	650,000C		650,000C	
6.		HMS502 - YOUTH SERVICES PROGRAM					
	OPERATING		HMS	3,542,811A		3,622,311A	
			HMS	1,309,342N		1,309,342N	
7.		HMS503 - YOUTH RESIDENTIAL PROGRAMS					
	OPERATING		HMS	88.50* 5,472,979A		88.50* 5,472,979A	
			HMS	1,463,704N		1,463,704N	
				.50* 15,940U		.50* 15,940U	
8.		DEF112 - SERVICES TO VETERANS					
	OPERATING		DEF	24.00* 1,154,201A		24.00* 1,164,201A	
	INVESTMENT CAPITAL		DEF	150,000C		300,000C	
9.		HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH					
	OPERATING		HMS	99.58* 8,144,765A		98.58* 8,867,471A	
			HMS	17.92* 5,265,240N		16.92* 5,220,096N	
			HMS	10,000R		10,000R	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		INVESTMENT CAPITAL	HMS	280,106U		280,106U	
			HMS	500,000C		500,000C	
10.	HMS201 -	TEMPORARY ASSISTANCE TO NEEDY FAMILIES					
	OPERATING		HMS	17,699,544A		17,003,411A	
			HMS	55,842,104N		50,220,369N	
11.	HMS202 -	PAYMENTS TO ASSIST THE AGED, BLIND, AND DISABLED					
	OPERATING		HMS	6,644,528A		6,644,528A	
12.	HMS204 -	GENERAL ASSISTANCE PAYMENTS					
	OPERATING		HMS	21,911,632A		21,711,632A	
13.	HMS206 -	FEDERAL ASSISTANCE PAYMENTS					
	OPERATING		HMS	1,809,458N		2,035,806N	
14.	HMS203 -	TEMPORARY ASSISTANCE TO OTHER NEEDY FAMILIES					
	OPERATING		HMS	25,510,633A		25,306,766A	
15.	HMS220 -	RENTAL HOUSING SERVICES					
	OPERATING		HMS	1,007,337A		1,007,337A	
				198.00*		186.00*	
			HMS	42,926,350N		42,418,414N	
				23.00*		19.00*	
			HMS	3,800,686W		3,675,346W	
	INVESTMENT CAPITAL		HMS	C		4,000,000C	
16.	BED220 -	RENTAL HOUSING SERVICES					
	OPERATING		BED		A		A
					*		*
			BED		N		N
					*		*
			BED		W		W
17.	HMS807 -	TEACHER HOUSING					
	OPERATING		HMS	358,567W		358,567W	
18.	BED807 -	TEACHER HOUSING					
	OPERATING		BED		W		W
19.	HMS229 -	HCDCH ADMINISTRATION					
				29.00*		29.00*	
	OPERATING		HMS	10,409,223N		10,409,223N	
				20.00*		20.00*	
			HMS	2,848,629W		2,848,629W	
	INVESTMENT CAPITAL		HMS	C		660,000C	
20.	BED229 -	HCDCH ADMINISTRATION					
					*		*
	OPERATING		BED		N		N
					*		*
			BED		W		W
21.	HMS225 -	PRIVATE HOUSING DEVELOPMENT & OWNERSHIP					
				11.00*		6.00*	
	OPERATING		HMS	1,528,333N		1,195,357N	
				11.00*		8.00*	
			HMS	2,044,603W		1,753,111W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
22.	BED225 - PRIVATE HOUSING DEVELOPMENT AND OWNERSHIP				*		*
	OPERATING		BED		N		N
					*		*
			BED		W		W
23.	HMS223 - BROADENED HOMESITE OWNERSHIP						
	OPERATING		HMS	237,012W		205,812W	
24.	BED223 - BROADENED HOMESITE OWNERSHIP						
	OPERATING		BED		W		W
25.	HMS227 - HOUSING FINANCE						
	OPERATING		HMS	3,000,000N		3,000,000N	
				11.00*		7.00*	
			HMS	1,405,532W		1,232,288W	
26.	BED227 - HOUSING FINANCE						
	OPERATING		BED		N		N
					*		*
			BED		W		W
27.	HMS222 - RENTAL ASSISTANCE SERVICES						
	OPERATING		HMS	5.25*		5.25*	
				1,220,647A		1,594,041A	
				11.75*		11.75*	
			HMS	25,490,030N		25,490,030N	
28.	BED222 - RENTAL ASSISTANCE SERVICES						
	OPERATING		BED		*		*
					A		A
					*		*
			BED		N		N
29.	HMS224 - HOMELESS SERVICES						
	OPERATING		HMS	4.00*		4.00*	
				4,914,387A		4,893,291A	
			HMS	1,369,108N		1,369,108N	
30.	BED224 - HOMELESS SERVICES						
	OPERATING		BED		*		*
					A		A
			BED		N		N
31.	HMS231 - RENTAL HOUSING TRUST FUND						
	OPERATING		HMS	14,008,563T		14,008,563T	
32.	BED231 - RENTAL HOUSING TRUST FUND						
	OPERATING		BED		T		T
33.	HMS230 - HEALTH CARE PAYMENTS						
	OPERATING		HMS	203,462,452A		214,576,573A	
			HMS	301,551,381N		319,174,852N	
			HMS	10,341,215U		10,341,215U	
34.	HMS603 - HOME AND COMMUNITY BASED CARE SERVICES						
	OPERATING		HMS	13,027,039A		13,877,039A	
			HMS	51,505,685N		54,146,633N	
			HMS	21,798,316U		23,793,802U	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
35.	HMS245	- QUEST HEALTH CARE PAYMENTS					
	OPERATING		HMS	129,357,652A		148,568,658A	
			HMS	176,414,907N		209,684,945N	
36.	HMS236	- ELIGIBILITY DETERMINATION AND EMPLOYMENT RELATED SERVICES					
	OPERATING		HMS	332.89*		331.75*	
			HMS	12,647,582A		12,561,778A	
			HMS	258.11*		257.25*	
			HMS	14,868,909N		14,911,954N	
37.	HMS238	- DISABILITY DETERMINATION					
	OPERATING		HMS	45.00*		39.00*	
			HMS	5,048,313N		4,885,797N	
38.	ATG500	- CHILD SUPPORT ENFORCEMENT SERVICES					
	OPERATING		ATG	52.02*		52.02*	
			ATG	3,105,599A		1,905,599A	
			ATG	128.04*		128.04*	
			ATG	16,406,623N		14,106,623N	
			ATG	13.94*		13.94*	
			ATG	2,703,228T		2,703,228T	
39.	HMS237	- EMPLOYMENT AND TRAINING					
	OPERATING		HMS	491,214A		491,214A	
			HMS	1,197,541N		1,197,541N	
40.	HHL602	- PLANNING, DEVELOPMENT, MANAGEMENT, AND GENERAL SUPPORT FOR HAWAIIAN HOMESTEADS					
	OPERATING		HHL	29.00*		29.00*	
			HHL	1,297,007A		1,277,007A	
			HHL	89.00*		89.00*	
	INVESTMENT CAPITAL		HHL	7,115,343B		7,172,586B	
			HHL	600,000C		C	
41.	HMS605	- COMMUNITY-BASED RESIDENTIAL SUPPORT					
	OPERATING		HMS	12,711,261A		12,711,261A	
42.	HTH904	- EXECUTIVE OFFICE ON AGING					
	OPERATING		HTH	3.55*		3.55*	
			HTH	6,060,687A		6,060,687A	
			HTH	7.45*		7.45*	
			HTH	7,119,320N		7,119,320N	
43.	HTH520	- PROGRAM DEVELOPMENT, COORDINATION OF SERVICES, AND ACCESS FOR PERSONS WITH DISABILITIES					
	OPERATING		HTH	5.00*		5.00*	
			HTH	820,018A		1,030,618A	
			HTH	10,000B		10,000B	
44.	HMS902	- GENERAL SUPPORT FOR HEALTH CARE PAYMENTS					
	OPERATING		HMS	107.74*		99.74*	
			HMS	9,044,794A		8,641,757A	
			HMS	110.26*		101.26*	
			HMS	16,756,953N		16,236,807N	
45.	HMS903	- GENERAL SUPPORT FOR BENEFITS, EMPLOYMENT, AND SUPPORT SERVICES					
	OPERATING		HMS	57.07*		57.07*	
			HMS	10,208,142A		10,205,953A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			HMS	47.93*		47.93*	
				26,966,839N		26,968,454N	
46.	HMS904	GENERAL ADMINISTRATION					
	OPERATING		HMS	172.84*		170.84*	
				8,050,754A		7,836,304A	
			HMS	15.16*		15.16*	
				1,388,339N		1,388,339N	
47.	HMS901	GENERAL SUPPORT FOR SOCIAL SERVICES					
	OPERATING		HMS	27.56*		27.56*	
				1,591,073A		1,591,073A	
			HMS	19.44*		19.44*	
	INVESTMENT CAPITAL		HMS	1,512,407N		1,512,407N	
				C		600,000C	

G. FORMAL EDUCATION

1. EDN100 - SCHOOL-BASED BUDGETING

OPERATING	EDN	11,683.50*	11,622.50*
	EDN	967,163,889A	985,448,117A
	EDN	5,372,924B	5,372,924B
	EDN	115,318,574N	142,799,981N
	EDN	5,950,000T	5,950,000T
	EDN	1,600,000U	2,000,000U
	EDN	2,000,000W	2,000,000W
INVESTMENT CAPITAL	AGS	72,703,000B	133,751,000B
	EDN	250,000B	100,350,000B
2. EDN150 - COMPREHENSIVE SCHOOL SUPPORT SERVICES

OPERATING	EDN	4,963.50*	4,966.50*
		284,037,140A	284,100,621A
		2.00*	2.00*
	EDN	33,903,370N	39,474,133N
3. EDN200 - INSTRUCTIONAL SUPPORT

OPERATING	EDN	220.50*	222.50*
	EDN	20,314,325A	20,486,062A
	EDN	1,600,000B	1,600,000B
	EDN	1,413,378N	1,613,378N
	EDN	800,000U	800,000U
4. EDN300 - STATE AND DISTRICT ADMINISTRATION

OPERATING	EDN	404.00*	404.00*
	EDN	31,226,941A	31,093,813A
		65,000N	65,000N
5. EDN400 - SCHOOL SUPPORT

OPERATING	EDN	1,627.60*	1,630.60*
	EDN	101,481,391A	110,872,576A
	EDN	728.50*	728.50*
	EDN	33,101,168B	27,321,290B
		3.00*	3.00*
	EDN	43,247,751N	40,669,737N
	EDN	2,000,000W	2,000,000W
6. EDN500 - SCHOOL COMMUNITY SERVICE

OPERATING	EDN	35.50*	35.50*
		8,216,835A	11,680,951A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			EDN	1,939,006B		1,939,006B	
			EDN	2,916,650N		3,208,314N	
			EDN	6,000,000U		7,000,000U	
			EDN	530,000W		530,000W	
7.	EDN600 - CHARTER SCHOOLS OPERATING		EDN		A	25,886,070A	
8.	AGS807 - PHYSICAL PLANT OPERATIONS AND MAINTENANCE - AGS			241.00*		238.00*	
	OPERATING		AGS	22,841,005A		16,801,511A	
	INVESTMENT CAPITAL		AGS	35,000,000C		C	
9.	EDN407 - PUBLIC LIBRARIES			534.55*		553.55*	
	OPERATING		EDN	24,530,903A		26,127,996A	
			EDN	3,125,000B		3,125,000B	
			EDN	865,244N		1,365,244N	
	INVESTMENT CAPITAL		AGS	1,550,000C		11,151,000C	
10.	DEF114 - HAWAII NATIONAL GUARD YOUTH CHALLENGE ACADEMY						
	OPERATING		DEF	1,043,835A		1,119,970A	
			DEF	1,680,000N		1,680,000N	
11.	UOH100 - UNIVERSITY OF HAWAII, MANOA			3,435.34*		3,440.84*	
	OPERATING		UOH	186,086,473A		186,638,524A	
				79.75*		79.75*	
			UOH	71,044,995B		71,044,995B	
				78.06*		78.06*	
			UOH	5,762,014N		5,762,014N	
				302.75*		302.75*	
	INVESTMENT CAPITAL		UOH	108,655,933W		124,594,342W	
			UOH	115,000C		15,720,000C	
			UOH	10,000,000N		N	
12.	UOH210 - UNIVERSITY OF HAWAII, HILO			361.25*		361.25*	
	OPERATING		UOH	20,449,410A		20,569,410A	
				14.00*		14.00*	
			UOH	7,940,557B		8,940,557B	
			UOH	394,543N		394,543N	
				11.50*		11.50*	
	INVESTMENT CAPITAL		UOH	4,084,938W		4,084,938W	
			UOH	3,260,000C		18,700,000C	
			UOH	N		18,405,000N	
13.	UOH220 - SMALL BUSINESS DEVELOPMENT						
	OPERATING		UOH	638,224A		638,224A	
14.	UOH700 - UNIVERSITY OF HAWAII, WEST OAHU			47.50*		47.50*	
	OPERATING		UOH	2,554,228A		2,554,228A	
			UOH	1,985,000B		1,985,000B	
			UOH	7,000N		7,000N	
			UOH	125,000W		125,000W	
	INVESTMENT CAPITAL		UOH	C		441,000C	
15.	UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES			1,532.25*		1,533.25*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
	OPERATING		UOH	75,920,657A		76,228,754A	
				77.50*		77.50*	
			UOH	40,783,445B		42,623,100B	
				15.60*		15.60*	
			UOH	3,540,927N		3,540,927N	
				4.50*		4.50*	
	INVESTMENT CAPITAL		UOH	4,848,882W		4,848,882W	
			UOH	300,000C		19,322,000C	
			UOH		R	200,000R	
16.	UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT						
	OPERATING		UOH	323.00*		366.50*	
				171,985,620A		188,000,766A	
				4.00*		4.00*	
			UOH	6,368,128B		8,368,128B	
				4.00*		4.00*	
			UOH	457,667N		657,667N	
				5.00*		5.00*	
	INVESTMENT CAPITAL		UOH	13,157,802W		13,157,802W	
			UOH	19,129,000C		34,378,000C	

H. CULTURE AND RECREATION

1. UOH881 - UNIVERSITY OF HAWAII, AQUARIA

	OPERATING		UOH	13.00*		13.00*	
				542,225A		542,225A	
				7.00*		7.00*	
			UOH	1,718,689B		1,718,689B	

2. AGS881 - PERFORMING AND VISUAL ARTS EVENTS

	OPERATING		AGS	10.00*		10.00*	
				1,863,595A		1,933,595A	
				9.00*		12.00*	
			AGS	4,156,414B		4,156,414B	
						1.00*	
			AGS	750,336N		750,336N	

3. AGS818 - ETHNIC GROUP PRESENTATIONS

	OPERATING		AGS	36,000A		36,000A	
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4. LNR802 - HISTORIC PRESERVATION

	OPERATING		LNR	13.00*		13.00*	
				804,496A		804,496A	
			LNR	126,679B		126,679B	
			LNR	466,101N		472,101N	

5. LNR804 - FOREST RECREATION

	OPERATING		LNR	36.00*		34.00*	
				1,383,307A		1,305,965A	
				3.50*		3.50*	
			LNR	422,401B		520,447B	
				3.50*		3.50*	
			LNR	526,193N		526,193N	
			LNR	416,062W		533,278W	

6. LNR805 - RECREATIONAL FISHERIES

	OPERATING		LNR	7.00*		7.00*	
				217,419A		214,456A	
			LNR	68,000B		68,000B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			LNR	438,149N		431,013N	
7.		LNR806 - PARKS ADMINISTRATION AND OPERATION					
	OPERATING		LNR	108.00*		90.00*	
			LNR	5,129,700A		4,747,538A	
			LNR	584,164B		584,164B	
			LNR	285,201N		285,201N	
	INVESTMENT CAPITAL		LNR	500,000C		15,100,000C	
8.		LNR801 - OCEAN-BASED RECREATION					
	OPERATING		LNR	96.00*		83.00*	
			LNR	15,607,162B		15,108,214B	
			LNR	700,000N		700,000N	
	INVESTMENT CAPITAL		LNR	125,000C		2,245,000C	
			LNR	1,400,000D		650,000D	
			LNR	E		10,000,000E	
			LNR	375,000N		775,000N	
9.		AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM					
	OPERATING		AGS	39.50*		39.50*	
			AGS	6,706,527B		6,661,873B	
	INVESTMENT CAPITAL		AGS	650,000B		B	
			AGS	300,000C		1,075,000C	
10.		LNR807 - PARK INTERPRETATION					
	OPERATING		LNR	18.00*		15.00*	
			LNR	2,481,782B		2,397,566B	

I. PUBLIC SAFETY

1.	PSD402 - HALAWA CORRECTIONAL FACILITY						
	OPERATING		PSD	407.00*		403.00*	
			PSD	18,384,712A		17,980,432A	
			PSD	52,419W		52,419W	
	INVESTMENT CAPITAL		AGS	C		5,960,000C	
2.	PSD403 - KULANI CORRECTIONAL FACILITY						
	OPERATING		PSD	79.00*		77.00*	
			PSD	3,890,566A		4,032,080A	
	INVESTMENT CAPITAL		AGS	5,300,000C		C	
3.	PSD404 - WAIAWA CORRECTIONAL FACILITY						
	OPERATING		PSD	108.00*		108.00*	
			PSD	4,379,493A		4,379,493A	
			PSD	15,000W		15,000W	
	INVESTMENT CAPITAL		AGS	C		925,000C	
4.	PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER						
	OPERATING		PSD	162.00*		152.00*	
			PSD	5,834,337A		5,537,578A	
5.	PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER						
	OPERATING		PSD	188.00*		187.00*	
			PSD	6,780,609A		6,735,175A	
			PSD	200,000S		200,000S	
	INVESTMENT CAPITAL		AGS	C		18,735,000C	
6.	PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER						
				484.00*		483.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	PSD	21,926,511A		21,638,473A	
			PSD	30,000W		30,000W	
		INVESTMENT CAPITAL	AGS		C	1,500,000C	
7.		PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER					
				69.00*		68.00*	
		OPERATING	PSD	2,768,758A		2,751,317A	
		INVESTMENT CAPITAL	AGS		C	475,000C	
8.		PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER					
				137.00*		134.00*	
		OPERATING	PSD	5,381,406A		5,231,640A	
9.		PSD410 - INTAKE SERVICE CENTERS					
				48.00*		53.00*	
		OPERATING	PSD	2,266,337A		2,266,337A	
10.		PSD420 - CORRECTION PROGRAM SERVICES					
				196.50*		180.50*	
		OPERATING	PSD	16,639,067A		16,470,107A	
11.		PSD421 - HEALTH CARE					
				160.93*		146.60*	
		OPERATING	PSD	13,326,043A		13,269,713A	
12.		PSD501 - PROTECTIVE SERVICES					
				85.00*			*
		OPERATING	PSD	2,879,230A			A
				7.00*			*
			PSD	541,407N			N
				13.00*			*
			PSD	1,368,262U			U
13.		PSD502 - NARCOTICS ENFORCEMENT					
				11.00*		11.00*	
		OPERATING	PSD	594,501A		594,501A	
				5.00*		5.00*	
			PSD	408,868W		385,856W	
14.		PSD503 - SHERIFF					
				148.00*		235.00*	
		OPERATING	PSD	5,791,602A		8,752,671A	
						7.00*	
			PSD	N		541,407N	
				63.00*		72.00*	
			PSD	4,243,524U		5,564,666U	
15.		PSD611 - ADULT PAROLE DETERMINATIONS					
				2.00*		2.00*	
		OPERATING	PSD	196,352A		196,352A	
16.		PSD612 - ADULT PAROLE SUPERVISION AND COUNSELING					
				44.00*		54.00*	
		OPERATING	PSD	2,194,714A		3,115,403A	
17.		PSD613 - CRIME VICTIM COMPENSATION COMMISSION					
				6.00*		6.00*	
		OPERATING	PSD	1,672,089B		1,672,089B	
			PSD	N		850,000N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
18. PSD900 - GENERAL ADMINISTRATION							
	OPERATING		PSD	143.10*		143.10*	
			PSD	40,455,031A		46,485,515A	
			PSD	693,832B		693,832B	
			PSD	75,065T		75,065T	
				9.00*		9.00*	
			PSD	7,578,537W		7,578,537W	
			PSD	742,980X		742,980X	
	INVESTMENT CAPITAL		AGS		C	1,000,000C	
			PSD		C	1,000,000C	
19. ATG231 - STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION							
	OPERATING		ATG	30.00*		30.00*	
			ATG	1,576,076A		1,576,076A	
			ATG	1,800,000N		1,800,000N	
				12.00*		12.00*	
			ATG	2,430,245W		2,430,245W	
20. LNR810 - PREVENTION OF NATURAL DISASTERS							
	OPERATING		LNR	2.35*		2.10*	
			LNR	128,870A		119,380A	
				1.65*		.90*	
	INVESTMENT CAPITAL		LNR	166,021N		134,386N	
			LNR		C	700,000C	
21. DEF110 - AMELIORATION OF PHYSICAL DISASTERS							
	OPERATING		DEF	120.80*		120.30*	
			DEF	7,127,151A		7,228,786A	
				43.70*		47.20*	
			DEF	7,891,420N		8,351,415N	
	INVESTMENT CAPITAL		AGS	1,167,000C		1,542,000C	
			AGS	100,000N		1,225,000N	
			DEF		C	75,000C	
			DEF		N	75,000N	
J. INDIVIDUAL RIGHTS							
1. CCA102 - CABLE TELEVISION							
	OPERATING		CCA		A	4.00*	
				4.00*		1,891,438A	
			CCA	1,107,241B		*	
						B	
2. CCA103 - CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES							
	OPERATING		CCA	23.00*		*	
			CCA	2,445,969B		B	
			CCA		U	23.00*	
						2,473,837U	
3. CCA104 - FINANCIAL INSTITUTION SERVICES							
	OPERATING		CCA		A	29.00*	
				29.00*		2,153,836A	
			CCA	2,132,488B		*	
						B	
4. CCA105 - PROFESSIONAL, VOCATIONAL, AND PERSONAL SERVICES							
	OPERATING		CCA	57.00*		57.00*	
				4.00*		4,101,752B	
				4.00*		4.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			CCA	1,476,265T		1,765,695T	
5.	BUF901	- TRANSPORTATION, COMMUNICATIONS, AND UTILITIES					
	OPERATING		BUF	43.00*		39.00*	
				7,490,045B		6,968,888B	
6.	CCA106	- INSURANCE REGULATORY SERVICES					
	OPERATING		CCA	76.00*	A	76.00*	A
			CCA	10,140,295B		2,550,000B	
			CCA	200,000T		200,000T	
7.	CCA110	- OFFICE OF CONSUMER PROTECTION - UNFAIR AND DECEPTIVE PRACTICES					
	OPERATING		CCA	16.00*	A	16.00*	A
			CCA	1,261,351B			B
			CCA	50,681T		50,681T	
8.	AGR812	- MEASUREMENT STANDARDS					
	OPERATING		AGR	17.00*		15.00*	
				677,088A		643,260A	
9.	CCA111	- BUSINESS REGISTRATION					
	OPERATING		CCA	68.00*	A	71.00*	A
			CCA	5,336,237B			B
10.	CCA112	- REGULATED INDUSTRIES COMPLAINTS OFFICE					
	OPERATING		CCA	17.00*	A	17.00*	A
			CCA	5,393,874B			B
11.	CCA191	- GENERAL SUPPORT - PROTECTION OF THE CONSUMER					
	OPERATING		CCA	40.00*	A	40.00*	A
			CCA	4,484,312B			B
12.	LTG105	- ENFORCEMENT OF INFORMATION PRACTICES					
	OPERATING		LTG	5.00*		5.00*	
				347,703A		347,703A	
13.	BUF151	- LEGAL ASSISTANCE IN CRIMINAL ACTIONS					
	OPERATING		BUF	83.00*		79.00*	
				8,105,793A		7,963,305A	
14.	LNR111	- CONVEYANCES AND RECORDINGS					
	OPERATING		LNR	48.00*			*
			LNR	1,802,298A			A
			LNR	5.00*		55.00*	
				781,339B		3,227,821B	
15.	LTG888	- COMMISSION ON THE STATUS OF WOMEN					
	OPERATING		LTG	1.00*		1.00*	
				94,623A		94,623A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
K. GOVERNMENT-WIDE SUPPORT							
1.	GOV100 - OFFICE OF THE GOVERNOR						
	OPERATING		GOV	34.00*		34.00*	
	INVESTMENT CAPITAL		GOV	3,069,976A		3,070,709A	
				1,000C		1,000C	
2.	LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR						
	OPERATING		LTG	3.00*		3.00*	
				586,546A		589,976A	
3.	GOV102 - OTHER POLICY DEVELOPMENT AND COORDINATION						
	OPERATING		GOV	3.00*		3.00*	
				225,015A		225,015A	
4.	BED144 - STATEWIDE PLANNING AND COORDINATION						
	OPERATING		BED	20.00*		20.00*	
			BED	1,601,676A		1,601,676A	
			BED	120,000B		120,000B	
			BED	4.00*		4.00*	
			BED	1,024,298N		2,270,000N	
			BED	1,000,000W		1,000,000W	
5.	BED103 - STATEWIDE LAND USE MANAGEMENT						
	OPERATING		BED	7.00*		6.00*	
				426,921A		401,265A	
6.	BED130 - ECONOMIC PLANNING AND RESEARCH						
	OPERATING		BED	16.00*		16.00*	
			BED	922,104A		922,104A	
			BED	4.00*		4.00*	
			BED	1,305,904B		1,305,904B	
7.	BUF101 - PROGRAM PLANNING, ANALYSIS, AND BUDGETING						
	OPERATING		BUF	50.00*		50.00*	
			BUF	136,147,705A		142,981,279A	
			BUF	163,733,225U		173,696,091U	
	INVESTMENT CAPITAL		AGS	2,000,000C		3,000,000C	
			BUF	138,166,000C		293,736,000C	
8.	LTG101 - CAMPAIGN SPENDING COMMISSION						
	OPERATING		LTG	*		*	
				T		T	
9.	AGS871 - CAMPAIGN SPENDING COMMISSION						
	OPERATING		AGS	4.00*		4.00*	
				394,801T		4,423,489T	
10.	LTG102 - OFFICE OF ELECTIONS						
	OPERATING		LTG	*		*	
				A		A	
11.	AGS879 - OFFICE OF ELECTIONS						
	OPERATING		AGS	4.00*		3.00*	
				2,483,224A		2,512,018A	
12.	TAX102 - INCOME ASSESSMENT AND AUDIT						
	OPERATING		TAX	103.00*		103.00*	
				4,600,626A		4,600,626A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
13.	TAX103	TAX COLLECTIONS ENFORCEMENT					
	OPERATING		TAX	83.50*		83.50*	
				2,955,978A		2,955,978A	
14.	TAX105	TAX SERVICES AND PROCESSING					
	OPERATING		TAX	88.50*		88.50*	
				4,881,057A		4,881,057A	
15.	TAX107	SUPPORTING SERVICES - REVENUE COLLECTION					
	OPERATING		TAX	57.00*		57.00*	
			TAX	5,896,489A		5,900,422A	
				8,579,542B		1,494,252B	
16.	AGS101	ACCOUNTING SYSTEM DEVELOPMENT AND MAINTENANCE					
	OPERATING		AGS	7.00*		7.00*	
				698,111A		698,111A	
17.	AGS102	EXPENDITURE EXAMINATION					
	OPERATING		AGS	19.00*		18.00*	
				1,041,789A		1,018,293A	
18.	AGS103	RECORDING AND REPORTING					
	OPERATING		AGS	12.00*		11.00*	
				591,596A		561,584A	
19.	AGS104	INTERNAL POST AUDIT					
	OPERATING		AGS	13.00*		12.00*	
				1,348,466A		627,854A	
20.	BUF115	FINANCIAL ADMINISTRATION					
	OPERATING		BUF	16.00*		14.00*	
				192,191,552A		206,599,208A	
			BUF	4.00*		4.00*	
				3,407,742T		3,259,868T	
			BUF	1.00*		*	
				133,552,060U		143,799,387U	
21.	ATG100	LEGAL SERVICES					
	OPERATING		ATG	201.15*		199.15*	
				17,676,600A		17,633,992A	
			ATG	15.00*		15.00*	
				1,475,959B		1,442,959B	
			ATG	12.00*		12.00*	
				9,435,058N		9,435,058N	
			ATG	3,918,000T		3,918,000T	
				40.85*		40.85*	
			ATG	6,879,698U		6,879,698U	
				4.00*		4.00*	
			ATG	3,016,392W		3,016,392W	
22.	AGS131	INFORMATION PROCESSING SERVICES					
	OPERATING		AGS	171.00*		164.00*	
				14,603,159A		14,369,723A	
			AGS	33.00*		33.00*	
				2,182,654U		2,182,654U	
23.	HRD102	WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFICIENCY					
				106.00*		100.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
	OPERATING		HRD	12,765,024A		14,331,324A	
			HRD	700,000B		700,000B	
			HRD	4,886,281U		4,886,281U	
24.	HRD191 - SUPPORTING SERVICES			9.00*		13.00*	
	OPERATING		HRD	1,109,733A		1,339,742A	
25.	BUF141 - RETIREMENT						
	OPERATING		BUF	137,882,906A		170,540,941A	
			BUF	194,800,270U		240,919,270U	
				67.00*		73.00*	
			BUF	16,554,244X		18,021,340X	
26.	BUF143 - HAWAII EMPLOYER - UNION TRUST FUND			23.00*		23.00*	
	OPERATING		BUF	3,439,250T		2,889,000T	
27.	LNR101 - PUBLIC LANDS MANAGEMENT			56.00*		51.00*	
	OPERATING		LNR	5,876,441B		5,715,593B	
			LNR	72,634N		72,634N	
	INVESTMENT CAPITAL		LNR	1,905,000B			
			LNR		C	7,900,000C	
			LNR		R	200,000R	
			LNR		S	500,000S	
28.	AGS203 - RISK MANAGEMENT			4.00*		4.00*	
	OPERATING		AGS	359,198A		416,295A	
			AGS	10,450,000W		10,450,000W	
29.	AGS211 - LAND SURVEY			18.00*		17.00*	
	OPERATING		AGS	837,561A		797,397A	
			AGS	285,000U		285,000U	
30.	AGS223 - OFFICE LEASING			5.00*		4.00*	
	OPERATING		AGS	11,834,547A		11,792,367A	
			AGS	5,500,000U		5,500,000U	
31.	AGS221 - CONSTRUCTION			18.00*		17.00*	
	OPERATING		AGS	1,145,462A		1,114,262A	
			AGS	4,000,000W		4,000,000W	
	INVESTMENT CAPITAL		AGS	7,750,000C		8,550,000C	
			AGS		N	2,000,000N	
32.	AGS231 - CUSTODIAL SERVICES			154.50*		154.50*	
	OPERATING		AGS	11,054,471A		11,259,471A	
			AGS	58,744B		58,744B	
			AGS	894,001U		894,001U	
33.	AGS232 - GROUNDS MAINTENANCE			41.50*		40.50*	
	OPERATING		AGS	1,344,400A		1,322,140A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
34.	AGS233	BUILDING REPAIRS AND ALTERATIONS					
	OPERATING		AGS	30.00*		30.00*	
	INVESTMENT CAPITAL		AGS	2,561,079A		2,561,079A	
				1,000,000C		1,000,000C	
35.	AGS240	STATE PROCUREMENT					
	OPERATING		AGS	21.00*		21.00*	
			AGS	1,043,020A		1,043,020A	
				50,000W		W	
36.	AGS244	SURPLUS PROPERTY MANAGEMENT					
	OPERATING		AGS	5.00*		5.00*	
				1,009,030W		1,709,030W	
37.	AGS251	MOTOR POOL					
	OPERATING		AGS	13.50*		12.50*	
				2,180,030W		2,178,996W	
38.	AGS252	PARKING CONTROL					
	OPERATING		AGS	26.50*		26.50*	
				2,981,124W		2,981,124W	
39.	AGS111	RECORDS MANAGEMENT					
	OPERATING		AGS	19.00*		18.00*	
				775,334A		744,446A	
40.	AGS901	GENERAL ADMINISTRATIVE SERVICES					
	OPERATING		AGS	44.00*		44.00*	
				2,180,688A		2,180,688A	
			AGS	1.00*		1.00*	
				54,188U		54,188U	
41.	SUB201	CITY AND COUNTY OF HONOLULU INVESTMENT CAPITAL	CCH		C	4,500,000C	
42.	SUB301	COUNTY OF HAWAII INVESTMENT CAPITAL	COH COH		C S	1,850,000C 500,000S	
43.	SUB401	COUNTY OF MAUI INVESTMENT CAPITAL	COM		C	850,000C	
44.	SUB501	COUNTY OF KAUAI INVESTMENT CAPITAL	COK COK	430,000C 430,000S		1,410,000C S''	

SECTION 4. Part III, Act 200, Session Laws of Hawaii 2003, is amended:

(1) By amending section 5 to read as follows:

“SECTION 5. Provided that for tourism (BED 113), the Hawaii tourism authority shall submit a detailed report for expenditures comparing budget appropriations to actual expenditures for fiscal years [2002-2003] 2003-2004 and [2003-2004] 2004-2005 (four months actual, eight months forecasted) with accompanying explanations for variances for Hawaii convention center operations; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the [2004] 2005 regular session.”

- (2) By adding a new section to read as follows:

“SECTION 5.1. Provided that of the trust fund appropriation for plant, pest, and disease control (AGR 122), the department of agriculture shall submit a report including, but not limited, to the following:

- (1) A detailed listing by position of overtime paid from the contribution of overtime plant quarantine trust fund; and
- (2) A description of actions taken by department to reduce reimbursable overtime costs;

provided further that the report shall be submitted for the previous fiscal year and the current fiscal year, five months actual, no later than twenty days prior to the convening of the 2005 regular session.”

- (3) By adding a new section to read as follows:

“SECTION 5.2. Provided that of the special fund appropriation for rabies quarantine (AGR 131), the department of agriculture shall submit a report including, but not limited to, the following:

- (1) The source and amount of all revenue;
- (2) A detailed account of all expenditures; and
- (3) The number of personnel including position titles at each facility (animal quarantine station and airport animal quarantine holding facility);

provided further that the report shall be submitted under the above established guidelines to the legislature for the previous two fiscal years and the current fiscal year, five months actual, no later than twenty days prior to the convening of the 2005 regular session.”

- (4) By amending section 6 to read as follows:

“SECTION 6. Provided that of the general fund appropriation for agricultural resource management (AGR 141), the sum of \$140,400 for fiscal year 2003-2004 and the sum of [~~\$140,400~~] \$240,400¹ for fiscal year 2004-2005 shall be deposited into the irrigation system revolving fund to be expended for purposes of the fund.”

- (5) By amending section 7 to read as follows:

“SECTION 7. Provided that of the general fund appropriation for agribusiness development and research (AGR 161), the sum of \$240,558 for fiscal year 2003-2004 and the sum of [~~\$240,558~~] \$190,558¹ for fiscal year 2004-2005 shall be deposited into the Hawaii agricultural development revolving fund to be expended for purposes of the fund.”

- (6) By amending section 8 to read as follows:

“SECTION 8. Provided that of the revolving fund appropriation for [~~the~~] agribusiness development [~~corporation~~] and research (AGR 161), the sum of \$50,000 for fiscal year 2003-2004 and the same sum for fiscal year 2004-2005 shall be expended from the Hawaii agricultural development revolving fund for the operation and maintenance of the east Kauai irrigation system.”

- (7) By adding a new section to read as follows:

“Section 8.1. Provided that of the revolving fund appropriation for agricultural resource management (AGR 141), the sum of \$100,000 for fiscal year 2004-2005 shall be expended for the purpose of the lower Hamakua ditch watershed project.”

- (8) By adding a new section to read as follows:

“SECTION 9.1. Provided that of the revolving fund appropriation for the Hawaii community development authority (BED150), the sum of \$400,000 for fiscal year 2004-2005 may be used for administrative expenses related to the operations of the Kakaako community development district.”

(9) By adding a new section to read as follows:

“SECTION 18.1. Provided that of the general fund and special fund appropriations for forests and wildlife resources (LNR 402), the sum of \$4,000,000 for fiscal year 2004-2005 shall be expended by the department of land and natural resources for a pilot statewide invasive species prevention, control, research, and outreach partnership program; provided further that portions of this appropriation may be transferred to other state departments to be expended for activities related to the statewide invasive species prevention, control, research, and outreach partnership program; provided further that the department of land and natural resources shall submit a report each year on the statewide strategic plan for the invasive species prevention, control, research, and outreach partnership program and identify the short and long term needs of the program with specific performance outcomes; provided further that the department shall submit a report to the legislature no less than twenty days prior to the convening of the 2005 regular session of all appropriation transfers (state and non-state) to other departments, including a detailed breakdown of matching non-state funds or equivalent services received by source, including dollar amounts, and how the funds expended addressed the needs of the strategic plan and the strategic plan’s performance outcomes; provided further that the funds to be expended for the program are matched by at least \$4,000,000 in new federal, county, private, and other non-state funds or in-kind services; and provided further that the funds shall not be used for any other purpose.”

(10) By adding a new section to read as follows:

“SECTION 18.2. Provided that any increase in the federal funding for hansen’s disease services (HTH 111) for Kalaupapa may be expended for purposes of the program as approved by the governor.”

(11) By adding a new section to read as follows:

“SECTION 25.1. Provided that the Hawaii health systems corporation shall submit its audited financial statement report as prepared by an independent accounting firm in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standards issued by the Comptroller General of the United States; provided further that this report shall include but not be limited to consolidated financial statements of the corporation for fiscal year 2003-2004, independent auditor’s report, and independent auditor’s report in accordance with Government Auditing Standards on the corporation’s internal control and compliance with laws and regulations; and provided further that the audited financial report for fiscal year 2003-2004 shall be submitted to the legislature no later than twenty days prior to the convening of the 2005 regular session.”

(12) By adding a new section to read as follows:

“SECTION 25.2. Provided that the Hawaii health systems corporation shall submit interim financial statements for the first six months of fiscal year 2004-2005; provided further that interim financial statements requested shall include, but not be limited to, a balance sheet and income statement, a breakdown of revenues and expenditures by location/hospital, aging of accounts receivable, aging of accounts payable, capital lease payment schedule, and cash flow projections for the current and next fiscal year; and provided further that this report shall be submitted to the

legislature no later than thirty days after the end of the first half of fiscal year 2004-2005."

(13) By adding a new section to read as follows:

"SECTION 26.1. Provided that the adult mental health division (HTH 420) shall submit a quarterly report on all payments made pursuant to the memorandum of agreement between the department of human services and the department of health dated November 26, 2002, to the Med-QUEST division for community mental health program services determined to be eligible for federal financial participation and provided to eligible aged, blind, and disabled medicaid recipients; provided further that the report shall be submitted to the legislature no later than forty-five days after the end of each fiscal quarter."

(14) By amending Section 33 to read as follows:

"SECTION 33. Provided that of the general fund appropriation for child out-of-home payments (HMS 303), the sum of \$30,579,126 for fiscal year 2003-2004 and the sum of [~~\$33,182,056~~] \$36,827,090 for fiscal year 2004-2005 shall be expended for adoption assistance, permanency assistance, relative foster board, non-relative foster board, and board-related costs and difficulty of care payments; and provided further that the department of human services shall submit a report each year to the legislature on the number of children who receive adoption assistance or difficulty of care payments and the amount of these payments for the previous fiscal year and the current fiscal year, five months actual, no later than twenty days prior to the convening of the 2004 and 2005 regular sessions."

(15) By amending section 35 to read as follows:

"SECTION 35. Provided that of the general fund appropriation for adult and community care services (HMS 601), the sum of \$1,833,307 for fiscal year 2003-2004 and the sum of [~~\$1,833,307~~] \$2,601,157 for fiscal year 2004-2005 shall be used to pay for chore services cash payments; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of human services shall submit a report each year that shall include, but not be limited to:

(1) All expenditures made broken down by cost element; and

(2) The number of individuals served by the program;

and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively."

(16) By adding a new section to read as follows:

"SECTION 36.1. Provided that of the general fund appropriation for health care payments (HMS 230), the sum of \$250,000 for fiscal year 2004-2005 shall be expended for compliance with the Health Insurance Portability and Accountability Act Final Security Rule; provided further that the department of human services shall submit a status report to the legislature that shall include, but not be limited to, the progress made in complying with the Health Insurance Portability and Accountability Act Final Security Rule, all outstanding tasks, and an expenditure report of all Health Insurance Portability and Accountability Act Final Security Rule-related activities performed by the department of human services; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2005 regular session."

(17) By amending section 37 to read as follows:

"SECTION 37. Provided that of the general fund appropriation for home and community-based care services (HMS 603), the sum of \$11,585,054 for fiscal

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year 2003-2004 and the sum of [\$11,585,054] \$12,085,054 for fiscal year 2004-2005 shall be expended for the nursing home without walls and residential alternative community care programs; provided further that the department of human services shall submit a report each year on the number of clients receiving services and projected to receive services, the number of individuals requesting services or on any waitlists, and the number of individuals in the State that qualify for these services; and provided further that this report shall be submitted to the legislature each year no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.”

(18) By adding a new section to read as follows:

“SECTION 37.1. Provided that the department of Hawaiian home lands shall submit a progress report concerning the implementation of the department’s five year plan including, but not limited, to the following:

- (1) The number of applicants awarded Hawaiian home lands;
- (2) The number of applicants on the Hawaiian home lands waiting list; and
- (3) The location, status of awards, and number of home-sites and housing units for each of the existing and planned housing development projects;

provided further that the report shall be submitted to the legislature no later than thirty days after the end of each fiscal quarter.”

(19) By adding a new section to read as follows:

“SECTION 37.2. Provided that the department of Hawaiian home lands shall submit a report regarding the actual and projected revenues and expenditures of the department’s trust funds that includes the previous three fiscal years, the current fiscal year, and the upcoming six fiscal years; provided further that the report shall be submitted under the above-established guidelines to the legislature no later than twenty days prior to the convening of the 2005 regular session.”

(20) By adding a new section to read as follows:

“Section 38.1. Provided that the Med-QUEST division of the department of human services shall submit a report including, but not limited to, the following information:

- (1) All payments made to certified provider agencies for community mental health program services, pursuant to the memorandum of agreement between the department of human services and the department of health dated November 26, 2002;
- (2) All receipts of federal reimbursements;
- (3) All payments made to the adult mental health division;

and provided further that the report shall be submitted to the legislature no later than thirty days after the end of each quarter.”

(21) By amending section 39 to read as follows:

“SECTION 39. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$123,918,240 for fiscal year 2003–2004 and the sum of [\$136,579,047] \$124,395,499 for fiscal year 2004–2005 shall be used to pay for health fund benefits for department of education employees [and]. The funds shall be transferred to the program planning, analysis, and budgeting program (BUF 101) of the department of budget and finance for this purpose[; and provided further that the funds shall be transferred] no later than July 16 of each respective fiscal year.”

(22) By amending section 40 to read as follows:

“SECTION 40. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$98,933,822 for fiscal year 2003–2004 and the sum of ~~[\$106,291,688]~~ \$98,377,766 for fiscal year 2004–2005 shall be used to pay for debt service on general obligation bonds issued for department of education projects ~~[and]. The funds shall be transferred to the financial administration program (BUF 115) of the department of budget and finance for this purpose[; and provided further that the funds shall be transferred]~~ no later than July 16 of each respective fiscal year.”

(23) By amending section 41 to read as follows:

“SECTION 41. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$76,403,876 for fiscal year 2003–2004 and the sum of ~~[\$105,883,879]~~ \$104,693,245 for fiscal year 2004–2005 shall be used to pay for pension accumulation contributions for department of education employees; provided further that the sum of \$63,911,192 for fiscal year 2003–2004 and the sum of ~~[\$65,914,430]~~ \$66,142,475 for fiscal year 2004–2005 shall be used to pay for social ~~[security/Medicare]~~ security/medicare contributions for department of education employees; provided further that the amounts shall be transferred to the retirement program (BUF 141) of the department of budget and finance for that purpose[; and provided further that the funds shall be transferred] no later than July 16 of each respective fiscal year.”

(24) By amending section 42 to read as follows:

“SECTION 42. Provided that of the general fund appropriations for school based budgeting (EDN 100), the following fiscal year 2004–2005 cost items shall be considered non-recurring cost items:

- | | |
|--|-----------------------|
| (1) Equipment for new facilities—
regular instruction | [4,281,492] 4,580,612 |
| (2) Equipment for new facilities—special Education | 128,122 |
| (3) Equipment for new facilities—school Administration | 106,143 |
| (4) Equipment for new facilities—school libraries | 259,164[;] |
| (5) Equipment for new facilities—support services | 48,179; |

and provided further that the aforementioned cost items shall be reduced by the appropriate amount at the beginning of fiscal biennium 2005–2007.”

(25) By adding a new section to read as follows:

“SECTION 42.1. Provided that of the general fund appropriation for school based budgeting (EDN 100) for fiscal year 2004–2005, the sum of \$2,094,480 for school safety manager/resource officer contracted positions shall be expended as follows:

Honolulu office district (Farrington-Kaiser complex: Farrington high school, Dole middle school, Kalakaua middle school, Kaiser high school, Niu Valley middle school; Kaimuki-Kalani complex: Kaimuki high school, Jarrett middle school, Kalani high school, Kaimuki middle school; McKinley-Roosevelt complex: McKinley high school, Central middle school, Washington middle school, Roosevelt high school, Kawanakoa middle school, Stevenson middle school): \$455,322.

Central office district (Aiea-Moanalua-Radford complex: Aiea high school, Aiea intermediate school, Moanalua high and middle school, Radford high school, Aliamanu middle school; Leilehua-Mililani-Waialua complex: Leilehua high school, Wahiawa middle school, Wheeler middle school, Mililani high and middle school, Waialua high school and Waialua intermediate school): \$364,257.

Leeward office district: (Campbell-Kapolei-Waianae complex: Campbell high school, Ilima intermediate school, Kapolei high school, Kapolei middle school, Waianae high and intermediate school; Nanakuli-Pearl City-Waipahu complex: Nanakuli high and intermediate school, Pearl City high school, Highlands intermediate school, Waipahu high and intermediate school): \$333,903.

Windward office district: (Castle-Kahuku complex: Castle high school, King intermediate school, Kahuku high and intermediate school; Kailua-Kalaheo complex: Kailua high school, Waimanalo elementary and intermediate school, Olomana school, Kalaheo high school, Kailua intermediate School): \$242,838.

Hawaii office district: (Hilo-Laupahoehoe-Waiakea complex: Hilo high school, Hilo intermediate school, Waiakea high and intermediate school; Ka'u-Keaau-Pahoa complex: Ka'u high school, Keaau high and middle school, Pahoa high and intermediate school; Kohala-Honokaa-Kealakehe-Kohala-Konawaena complex: Honokaa high and intermediate school, Waimea middle school, Kealakehe high and intermediate school, Kohala high school, Konawaena high and middle school): \$455,322.

Maui office district: (Baldwin-Kekaulike-Maui complex: Iao school, Samuel Enoka Kalama intermediate school, Lokelani intermediate school, Maui Waena intermediate school; Hana-Lahainaluna-Lanai-Molokai complex: Lahaina intermediate school): \$151,774.

Kauai office district: (Kapaa-Kauai-Waimea complex: Kapaa middle school, Chiefess Kamakahelei middle school, Waimea Canyon school): \$91,064."

(26) By adding a new section to read as follows:

"SECTION 42.2. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$2,845,457 for fiscal year 2004-2005 shall be used to pay for health fund benefits for charter school employees. The funds shall be transferred to the program planning, analysis, and budgeting program (BUF 101) of the department of budget and finance for this purpose no later than July 16 of the respective fiscal year."

(27) By adding a new section to read as follows:

"SECTION 42.3. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$1,190,634 for fiscal year 2004-2005 shall be used to pay for pension accumulation contributions for charter school employees; provided further that the sum of \$1,451,756 for fiscal year 2004-2005 shall be used to pay for social security/medicare contributions for charter school employees; provided further that the funds shall be transferred to the retirement program (BUF 141) of the department of budget and finance for that purpose no later than July 16 of the respective fiscal year."

(28) By adding a new section to read as follows:

"SECTION 50.1. Provided that of the general fund appropriation for the university of Hawaii, Manoa (UOH 100), the sum of \$250,000 for fiscal year 2004-2005 shall be used to support the web-based data center of the center on the family and expansion of the data center's information resources to include additional indicators of health and well being of Hawaii's children, families, and elderly."

(29) By adding a new section to read as follows:

"Section 50.2 Provided that of the general fund appropriation for the university of Hawaii, Manoa (UOH 100), the sum of \$70,000 for fiscal year 2004-2005 shall to used to expand the public administration program; provided further that any unexpended funds shall lapse into the general fund."

(30) By amending section 51 to read as follows:

“SECTION 51. Provided that of the general fund appropriation for system-wide support (UOH 900), the sum of \$45,211,688 for fiscal year 2003-2004 and the sum of [~~\$49,864,433~~] \$46,455,135 for fiscal year 2004-2005 shall be used to pay for health fund benefits for university of Hawaii employees [and]. The funds shall be transferred to the program planning, analysis, and budgeting program (BUF 101) of the department of budget and finance for that purpose[; and provided further that the funds shall be transferred] no later than July 16 of each respective fiscal year.”

(31) By amending section 52 to read as follows:

“SECTION 52. Provided that of the general fund appropriation for system-wide support (UOH 900), the sum of \$45,661,764 for fiscal year 2003-2004 and the sum of [~~\$49,057,702~~] \$45,405,122 for fiscal year 2004-2005 shall be used to pay for debt service on general obligation bonds issued for university of Hawaii projects [and]. The funds shall be transferred to the financial administration program (BUF 115) of the department of budget and finance for that purpose[; and provided further that the funds shall be transferred] no later than July 16 of each respective fiscal year.”

(32) By amending section 53 to read as follows:

“SECTION 53. Provided that of the general fund appropriation for system-wide support (UOH 900), the sum of \$29,936,414 for fiscal year 2003-2004 and the sum of \$41,477,688 for fiscal year 2004-2005 shall be used to pay for pension accumulation contributions for university of Hawaii employees; provided further that the sum of \$24,548,788 for fiscal year 2003-2004 and the sum of [~~\$25,318,248~~] \$25,963,472 for fiscal year 2004-2005 shall be used to pay for social [~~security/~~ Medicare] security/medicare contributions for university of Hawaii employees; provided further that the amounts shall be transferred to the retirement program (BUF 141) of the department of budget and finance for that purpose[; and provided further that the funds shall be transferred] no later than July 16 of each respective fiscal year.”

(33) By amending section 56 to read as follows:

“SECTION 56. Provided that of the general fund appropriation for intake service centers (PSD 410), corrections program services (PSD 420), and adult parole supervision and counseling (PSD 612), the sum of \$418,401 for fiscal year 2003-2004 and the sum of [~~\$418,401~~] \$918,401 for fiscal year 2004-2005 shall be expended for substance abuse treatment, sex offender treatment, transition skills and job development, and mental health treatment programs for the pretrial, incarcerated, and parolee populations; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of public safety shall submit a report each year on all services provided, graduation rates, recidivism rates of graduates, and expenditures for the previous fiscal year and the current fiscal year, four months actual; provided further that this report shall include monthly parole population counts and parole revocations for the previous fiscal year and the current fiscal year, four months actual; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions[~~, respectively~~].”

(34) By amending section 57 to read as follows:

“SECTION 57. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$28,523,136 for fiscal year 2003-2004 and the sum of [~~\$28,523,136~~] \$33,520,992 for fiscal year 2004-2005 shall be expended for

mainland prison contracts for transportation and necessary operation costs of housing; provided further that if the department of public safety determines that there are inmates who can be released or paroled for the purpose of treatment, and that such release or parole lowers the number of beds that need to be leased in mainland facilities, then an appropriate part of this sum may be used for treatment services; provided further that any unexpended funds shall lapse into the general fund; provided further that the department of public safety shall submit a report each year of all expenditures made for [the] mainland prisoners for the previous fiscal year and the current fiscal year, four months actual; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions[~~, respectively~~].”

(35) By amending section 58 to read as follows:

“SECTION 58. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$2,628,000 for fiscal year 2003–2004 and the sum of [\$2,628,000] \$3,384,747 for fiscal year 2004–2005 shall be expended for the housing of inmates at the Hawaii based federal detention centers or mainland facilities; provided further that the department of public safety shall provide a report to the legislature each year concerning its actions surrounding the transportation of additional inmates to mainland facilities to make available more space, the total cost including transportation and housing of an inmate on the mainland versus renting bed space at the federal detention center, and a detailed breakdown of the criteria used to select which inmates are eligible to be moved to mainland facilities; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions[~~, respectively~~].”

(36) By amending Section 60 to read as follows:

“SECTION 60. Provided that the department of commerce and consumer affairs shall submit a detailed report each year on how the department’s expenditures will be aligned with their [~~special~~] general fund revenue collections; and provided further that this report shall include a discussion of the plans for the lowering of its fees to appropriate levels; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.”

(37) By adding a new section to read as follows:

“SECTION 60.1. Provided that of the general fund appropriation for the department of consumer affairs, an amount to be determined by the department of budget and finance for fiscal year 2004-2005 shall be used to pay for health fund benefits for the department of consumer affairs employees and transferred to the program planning, analysis, and budgeting program (BUF 101) of the department of budget and finance for this purpose; and provided further that the funds shall be transferred no later than July 16 of fiscal year 2004-2005.”

(38) By adding a new section to read as follows:

“SECTION 60.2. Provided that of the general fund appropriation for the department of consumer affairs, an amount to be determined by the department of budget and finance for fiscal year 2004-2005 shall be used to pay for pension accumulation contributions for department of consumer affairs employees; provided further that an amount to be determined by the department of budget and finance for fiscal year 2004-2005 shall be used to pay for social security/medicare contributions for department of consumer affairs employees; provided further that the amounts shall be transferred to the retirement program (BUF 141) of the department of

budget and finance for that purpose; and provided further that the funds shall be transferred no later that July 16 of fiscal year 2004-2005.’’

(39) By amending section 63 to read as follows:

“SECTION 63. Provided that of the general fund and inter-departmental transfer funds appropriated for program planning, analysis, and budgeting (BUF 101), the sums of [~~\$300,106,277~~] \$290,530,300 and [~~\$330,724,775~~] \$308,112,682, respectively for fiscal year 2003-2004 and fiscal year 2004-2005, or so much thereof as ~~[shall]~~ may be necessary, shall be expended for the State employers share of health premiums for active employees and retirees; provided further that the Hawaii employer-union health benefits trust fund shall only contract for and offer health benefit and insurance plans that satisfy the objectives of chapter 87A, Hawaii Revised Statutes; provided further that the total aggregate cost of plans contracted for and offered to state active employees and retirees in fiscal year 2003-2004 and fiscal year 2004-2005 shall not exceed the total aggregate amount appropriated for the state employers’ share of that fiscal year adjusted for active and retiree enrollment levels; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(40) By amending section 64 to read as follows:

“SECTION 64. Provided that of the general fund appropriation for program[;] planning, analysis, and budgeting (BUF 101), the sum of \$600,789 for fiscal year 2003-2004 and [~~\$570,789~~] \$720,789 for fiscal year 2004-2005 shall be expended as a subsidy to the Bishop Museum; and provided further that any unexpended funds for this purpose shall lapse to the general fund.”

(41) By amending section 65 to read as follows:

“SECTION 65. Provided that of the general fund appropriation for the office of elections [~~(LTG-102);~~] (AGS 879), the sum of \$1,229,348 for fiscal year 2004-2005 shall be expended for election day workers, which shall include but not be limited to section heads, specialists, assistants, computer programmers, warehouse workers, warehouse supervisors, precinct officials, troubleshooters, and other various poll workers; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(42) By amending section 68 to read as follows:

“SECTION 68. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of [~~\$206,109,206~~] \$190,299,559 for fiscal year 2003–2004 and the sum of [~~\$221,437,876~~] \$204,500,771 for fiscal year 2004–2005 shall be used to pay for interest and principal on general obligation bonds; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

(43) By adding a new section to read as follows:

“SECTION 68.1. Provided that of the revolving fund appropriation for the criminal forfeiture revolving fund, any revenue in excess of \$1,200,000 after the close of fiscal year 2003-2004 shall be transferred to the department of health alcohol and drug abuse division’s drug demand reduction assessments special fund to be expended for the purpose of alcohol and drug abuse prevention and treatment.”

(44) By amending Section 71 to read as follows:

“SECTION 71. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of

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\$2,221,620 for fiscal year 2003-2004 and the sum of [~~\$2,221,620~~] \$1,021,620 for fiscal year 2004-2005 shall be expended for unemployment compensation claims of former state employees; provided further that any unrequired and unexpended funds appropriated for this purpose may be expended to meet workers' compensation claims."

(45) By amending section 72 to read as follows:

"SECTION 72. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of \$4,933,726 for fiscal year 2003-2004 and the sum of [~~\$4,933,726~~] \$7,989,622 for fiscal year 2004-2005 shall be expended for workers' compensation claims; and provided further that the department of human resources development shall submit a detailed report each year of all expenditures, including the number of claims for workers' compensation claim payments; statistics on the duration of payments made to claimants; statistics on the average compensation paid per claimant; and a breakdown of the claims paid by department. This report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.²"

(46) By amending section 75 to read as follows:

"SECTION 75. Provided that of the general fund appropriation for the department of budget and finance, retirement (BUF 141), the sum of \$62,609,484 for fiscal year 2003-2004 and the sum of [~~\$64,571,922~~] \$66,217,510 for fiscal year 2004-2005 shall be expended for the employer's share of the social [~~security/Medicare~~] security/medicare payment for employees; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund."

(47) By amending section 76 to read as follows:

"SECTION 76. Provided that of the interdepartmental transfer appropriation for retirement (BUF 141), the sum of \$88,459,980 for fiscal year 2003-2004 and the sum of [~~\$91,232,678~~] \$93,557,703 for fiscal year 2004-2005 shall be expended for the university of Hawaii and department of education's employer's share of the social [~~security/Medicare~~] security/medicare payment; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund."

(48) By adding a new section to read as follows:

"SECTION 76.1. Provided that the department of accounting and general services shall submit a report on risk management (AGS 203); provided further that the report shall include, but not be limited to, information regarding the sufficient amount of funds that should be in the state risk management revolving fund for emergency use, no later than twenty days prior to the convening of the 2005 regular session."

SECTION 5. Part IV, Act 200, Session Laws of Hawaii 2003, is amended by amending section 77 to read as follows:

"SECTION 77. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project, if such combination is advantageous

or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
A. ECONOMIC DEVELOPMENT							
BED101 - BUSINESS DEVELOPMENT AND MARKETING							
0.01.		HAWAII THEATRE CENTER, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RESTORATION AND MAINTENANCE OF THE HAWAII THEATRE CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN				60	
		CONSTRUCTION				240	
		TOTAL FUNDING	BED		C	300C	
0.02.		OAHU ARTS CENTER, OAHU					
		PLANS AND DESIGN FOR A PERFORMING ARTS EDUCATION CENTER AND AN AUDITORIUM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS				199	
		DESIGN				1	
		TOTAL FUNDING	BED		C	200C	
BED107 - FOREIGN TRADE ZONE							
0.03.	FTZ002	PIER 2 WAREHOUSE AND OFFICE IMPROVEMENTS, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF EXISTING OFFICE AND WAREHOUSE SPACE. PROJECT MAY INCLUDE THE INSTALLATION OF A NEW CHILLER SYSTEM AND A FACILITY FOR FUMIGATION.					
		PLANS				50	
		DESIGN				50	
		CONSTRUCTION				1,700	
		EQUIPMENT				100	
		TOTAL FUNDING	BED		N	1,900N	
0.04.		FOREIGN-TRADE ZONE SECURITY IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR VARIOUS IMPROVEMENTS TO THE PHYSICAL SECURITY OF THE FOREIGN-TRADE ZONE FACILITY AND THE UPGRADE OF THE ALARM AND SURVEILLANCE SYSTEM.					
		DESIGN				25	
		CONSTRUCTION				75	
		EQUIPMENT				150	
		TOTAL FUNDING	BED		C	250C	

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F

BED113 - TOURISM

- 0.05. HCC501 HAWAII CONVENTION CENTER MAJOR REPAIR, REPLACEMENT AND MAINTENANCE, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAJOR REPAIR, REPLACEMENT AND MAINTENANCE OF THE HAWAII CONVENTION CENTER. REPLACEMENT OF WORN FLOOR COVERING, OF OUTDATED EQUIPMENT, INSTALLATION OF NEW EQUIPMENT AND MAJOR MODIFICATION AND REFURBISHING OF THE CENTER.

PLANS						10	
DESIGN						10	
CONSTRUCTION						280	
EQUIPMENT						1,700	
TOTAL FUNDING			BED		C	2,000C	

- 0.06. HONOLULU ZOO SOCIETY, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF AN EDUCATION/DISCOVERY CENTER COMPLEX, VETERINARY CLINIC, AND HAWAIIAN ISLANDS EXHIBIT AT THE HONOLULU ZOO. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS						1	
DESIGN						49	
CONSTRUCTION						650	
TOTAL FUNDING			BED		C	700C	

- 0.07. MILITARY AVIATION MUSEUM OF THE PACIFIC, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF AN AVIATION MUSEUM AND NATIONAL HISTORIC SITE ON FORD ISLAND. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS						100	
DESIGN						200	
CONSTRUCTION						700	
TOTAL FUNDING			BED		C	1,000C	

AGR141 - AGRICULTURAL RESOURCE MANAGEMENT

1. 200401 STATE AGRICULTURAL WATER AND USE DEVELOPMENT PLAN, STATEWIDE

PLANS TO PREPARE STATE AGRICULTURAL WATER PLAN AS MANDATED BY ACT 101, SLH 1998. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS				300			
TOTAL FUNDING			AGR	150C			C
			AGR	150N			N

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
2.	970001	WAIANAE AGRICULTURAL PARK, DRAINAGE IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR THE WAIANAE AGRICULTURAL PARK SUBDIVISION, CONSISTING OF OPEN DITCHES, SEDIMENT PONDS AND OTHER APPURTENANT WORKS.					
		CONSTRUCTION		2,200			
		TOTAL FUNDING	AGR	2,200C			C
3.	200106	MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI					
		PLANS FOR THE IDENTIFICATION OF NEW SOURCES FOR THE MOLOKAI IRRIGATION SYSTEM, IMPROVEMENTS TO ADDRESS LONG-TERM NEEDS, AND EXPANSION.					
		PLANS		200			
		TOTAL FUNDING	AGR	200C			C
3.01.	200402	MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE MOLOKAI IRRIGATION SYSTEM.					
		DESIGN					1
		CONSTRUCTION					248
		EQUIPMENT					1
		TOTAL FUNDING	AGR		C		250C
3.02.		AGRICULTURAL WATER AND INFRASTRUCTURE DEVELOPMENT, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF NEW WATER RESOURCES AND IMPROVEMENTS TO EXISTING WATER INFRASTRUCTURE, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					50
		LAND					250
		DESIGN					50
		CONSTRUCTION					5,850
		EQUIPMENT					50
		TOTAL FUNDING	AGR		C		3,000C
			AGR		N		3,250N
3.03.		PAAUILO RENDERING PLANT, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING FACILITY AND REPLACEMENT OF EQUIPMENT.					
		PLANS					75
		DESIGN					75
		CONSTRUCTION					750
		EQUIPMENT					200
		TOTAL FUNDING	AGR		C		1,100C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH							
3.04.		KAUAI TROPICAL FRUIT DISINFESTATION FACILITY IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE TROPICAL FRUIT DISINFESTATION FACILITY ON KAUAI.					
		DESIGN					50
		CONSTRUCTION					100
		TOTAL FUNDING	AGR		C		150C
AGR153 - AQUACULTURE DEVELOPMENT PROGRAM							
4.	P30002	THE OCEANIC INSTITUTE, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE OCEANIC INSTITUTE'S CENTER FOR APPLIED AQUACULTURE AND MARINE BIOTECHNOLOGY AQUATIC FEEDS RESEARCH AND PILOT PRODUCTION FACILITY IN HILO. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			1		
		CONSTRUCTION			498		
		EQUIPMENT			1		
		TOTAL FUNDING	AGR		500C		C
BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION							
4.01.	TE005	MAUI RESEARCH AND TECHNOLOGY CENTER BUILDING C, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR BUILDING(S) ON THE SITE OF THE MAUI RESEARCH AND TECHNOLOGY CENTER, KIHAI, MAUI, HAWAII. BUILDING(S) TO BE USED BY TECHNOLOGY COMPANIES AND FOR TECHNOLOGY PURPOSES.					
		PLANS					5
		DESIGN					700
		CONSTRUCTION					7,500
		EQUIPMENT					200
		TOTAL FUNDING	BED		E		8,405E
4.02.		BIOTECHNOLOGY INCUBATOR AND INNOVATION FACILITY AT KAKAAKO, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A BIOTECH INCUBATOR AND INNOVATION FACILITY INCLUDING WET LAB SPACE AT KAKAAKO.					
		PLANS					500
		LAND					1
		DESIGN					1,497
		CONSTRUCTION					1
		EQUIPMENT					1
		TOTAL FUNDING	BED		C		2,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F

BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

4.03. NELH25 NELHA MAIN PUMP STATION RENOVATION AND UPGRADE, HAWAII

PLANS, DESIGN, AND CONSTRUCTION FOR THE
RENOVATION TO THE EXISTING PUMP STATION.

PLANS							30
DESIGN							60
CONSTRUCTION							750
TOTAL FUNDING			BED		C		840C

LNR141 - WATER AND LAND DEVELOPMENT5. J32 WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS,
OAHU

CONSTRUCTION FOR INCREMENTAL
IMPROVEMENTS TO MEET WATER QUALITY
STANDARDS, INCLUDING INJECTION WELLS, FILTER
STRUCTURES AND FILTER CELLS, DISINFECTION
MIXING AND CONTACT CHAMBER, DISSOLVED AIR
FLOTATION THICKENER, CLARIFIERS, PUMP
STATION, FLOOD PROOFING, EQUALIZATION BASIN
SYSTEM UPGRADES, TERTIARY TREATMENT, AND
OTHER RELATED WORK.

CONSTRUCTION				1,400			18,190
TOTAL FUNDING			LNR	1,400C			18,190C

5.01. ALA WAI WATERSHED IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION OF RETENTION
BASINS AND VEGETATIVE COVER ALONG STREAM
BANKS IN THE ALA WAI WATERSHED AREA TO
REDUCE SEDIMENT FLOW INTO THE ALA WAI
CANAL.

DESIGN							1
CONSTRUCTION							399
TOTAL FUNDING			LNR		C		400C

BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY

6. HCD001 KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND
CONSTRUCTION FOR COSTS FOR PROJECT FUNDED
STAFF POSITIONS FOR IMPLEMENTATION OF
CAPITAL IMPROVEMENT PROJECTS FOR HAWAII
COMMUNITY DEVELOPMENT AUTHORITY'S
KAKAAKO COMMUNITY DEVELOPMENT DISTRICT.
FUNDS MAY BE USED TO MATCH FEDERAL AND
NON-STATE FUNDS, AS MAY BE AVAILABLE.

PLANS				1,309			1,366
LAND				1			1
DESIGN				1			1
CONSTRUCTION				1			1
TOTAL FUNDING			BED	1,312C			1,369C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
6.01.	KA008	KAKAAKO MAKAI IMPROVEMENTS, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO IMPROVE INFRASTRUCTURE AND PREPARE SITES FOR FUTURE DEVELOPMENT IN KAKAAKO MAKAI. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY AND UTILITY SYSTEMS.					
		PLANS					1
		LAND					1
		DESIGN					1
		CONSTRUCTION				4,197	
		TOTAL FUNDING	BED		C	4,200C	
6.02.	KA010	KAKAAKO PARKING STRUCTURE, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS OR PORTIONS THEREOF ASSOCIATED WITH CONSTRUCTION OF A 1000-STALL PUBLIC PARKING FACILITY.					
		PLANS					1
		DESIGN				1,999	
		CONSTRUCTION				18,000	
		TOTAL FUNDING	BED		E	20,000E	
6.03.		HONUAKAHA HOUSING COMPLEX RECONSTRUCTION AND IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE HONUAKAHA HOUSING COMPLEX. IMPROVEMENTS MAY INCLUDE REROOFING, SLAB REPAIR, WATERPROOFING, RENOVATIONS, REPLACEMENT OF COURTYARD AND PLANTER HARDSCAPE AND LANDSCAPE, AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		DESIGN				400	
		CONSTRUCTION				2,600	
		TOTAL FUNDING	BED		C	3,000C	
6.04.		KALAELOA ECONOMIC MASTER PLAN, OAHU					
		PLANS FOR AN ECONOMIC MASTER PLAN AND LAND USE PLANNING FOR THE KALAELOA COMMUNITY DEVELOPMENT DISTRICT.					
		PLANS				900	
		TOTAL FUNDING	BED		C	450C	
			BED		N	450N	

B. EMPLOYMENT

HMS802 - VOCATIONAL REHABILITATION

1. P30003 LANAKILA REHABILITATION CENTER, OAHU

DESIGN AND CONSTRUCTION FOR THE RENOVATION AND IMPROVEMENT OF THE HOOPONO ANNEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

DESIGN		1		1
CONSTRUCTION		499		999
TOTAL FUNDING	HMS	500C		1,000C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
LBR903 - OFFICE OF COMMUNITY SERVICES							
2.	P30004	HONOLULU COMMUNITY ACTION PROGRAM, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR AN ADMINISTRATIVE HEADQUARTERS AND RELATED COMMUNITY FACILITIES FOR THE HONOLULU COMMUNITY ACTION PROGRAM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS			1		
		LAND			622		
		DESIGN			1		
		CONSTRUCTION			1		
		TOTAL FUNDING	LBR		625C		C
3.	P30005	ORI ANUENUE HALE, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT AND EQUIP ORI ANUENUE HALE'S COMMUNITY SERVICE FACILITY IN CENTRAL OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			1		
		CONSTRUCTION			2,000		
		EQUIPMENT			499		
		TOTAL FUNDING	LBR		2,500C		C
4.	P30006	SEAGULL SCHOOLS, OAHU					
		DESIGN AND CONSTRUCTION FOR CHILDCARE CENTERS ON OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			1		1
		CONSTRUCTION			699		299
		TOTAL FUNDING	LBR		700C		300C

C. TRANSPORTATION FACILITIES

TRN102 - HONOLULU INTERNATIONAL AIRPORT

1. A20A HONOLULU INTERNATIONAL AIRPORT, INTRA-TERMINAL TRANSPORTATION SYSTEM, OAHU

CONSTRUCTION TO IMPLEMENT THE RECOMMENDATIONS OF THE INTRA-TERMINAL TRANSPORTATION SYSTEM, PHASE I PLANNING STUDY AND RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION			45,000
TOTAL FUNDING	TRN	E	20,000E
	TRN	N	25,000N
2. A24A HONOLULU INTERNATIONAL AIRPORT, EMERGENCY OPERATIONS CENTER, OAHU

CONSTRUCTION OF AN EMERGENCY OPERATIONS CENTER AND RELATED IMPROVEMENTS AT THE

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		CONSTRUCTION		9,800			
		TOTAL FUNDING	TRN	3,800	E		E
			TRN	6,000	N		N
3.	A41K	HONOLULU INTERNATIONAL AIRPORT, ARCHITECTURAL BARRIER REMOVAL, OAHU					
CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT (ADA) REQUIREMENTS AT HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		CONSTRUCTION		3,000			
		TOTAL FUNDING	TRN	700	B		B
			TRN	2,300	X		X
3.01.	A24B	HONOLULU INTERNATIONAL AIRPORT, INLINE BAGGAGE SYSTEM IMPROVEMENTS, OAHU					
CONSTRUCTION OF INLINE BAGGAGE SYSTEM IMPROVEMENTS INCLUDING EXPLOSIVE DETECTION SYSTEMS, BAGGAGE BELT CONVEYORS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		CONSTRUCTION				28,250	
		TOTAL FUNDING	TRN		E	12,250	E
			TRN		N	16,000	N
3.02.	A29A	HONOLULU INTERNATIONAL AIRPORT, AIR CONDITIONING SYSTEM IMPROVEMENTS, OAHU					
DESIGN FOR A REPLACEMENT OF THE AIRPORT CHILLER PLANT AND CONSTRUCTION OF A CHILLED WATER LOOP LOCATED IN THE OVERSEAS TERMINAL OF HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		DESIGN				2,250	
		TOTAL FUNDING	TRN		B	525	B
			TRN		N	1,725	N

TRN104 - GENERAL AVIATION

4. A71C KALAELOA AIRPORT FACILITY IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS, AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, HANGAR, AND AVIATION FUEL SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			50		
		CONSTRUCTION					450
		TOTAL FUNDING	TRN		50B		50B
			TRN		N		400N

TRN111 - HILO INTERNATIONAL AIRPORT

5. B10P HILO INTERNATIONAL AIRPORT, INSTALLATION OF NEW FIRE ALARM SYSTEM, HAWAII

CONSTRUCTION FOR THE INSTALLATION OF A NEW FIRE ALARM SYSTEM.

CONSTRUCTION		250	
TOTAL FUNDING	TRN	250B	B

6. B10Q HILO INTERNATIONAL AIRPORT, INSTALLATION OF SECURITY FENCING, HAWAII

CONSTRUCTION FOR THE INSTALLATION OF SECURITY FENCING AND RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		900	
TOTAL FUNDING	TRN	300E	E
	TRN	600N	N

7. B10S HILO INTERNATIONAL AIRPORT, MAINTENANCE BASEYARD IMPROVEMENTS, HAWAII

CONSTRUCTION FOR MAINTENANCE BASEYARD IMPROVEMENTS, INCLUDING REPLACING THE ROOF AND OTHER STRUCTURAL MEMBERS OF THE MAINTENANCE BUILDING, ADDING A NEW INVENTORY STORAGE BUILDING, AND A NEW CRASH FIRE REPAIR BAY.

CONSTRUCTION		500	
TOTAL FUNDING	TRN	500B	B

- 7.01. B10N NOISE ATTENUATION FOR KEAUKAHA SUBDIVISION, HAWAII

CONSTRUCTION FOR NOISE ATTENUATION OF PROPERTIES WITHIN THE 65-75 DNL CONTOUR RANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION			700
TOTAL FUNDING	TRN	B	100B
	TRN	N	600N

TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOE

8. C03B KONA INTERNATIONAL AIRPORT AT KEAHOE, PARKING LOT EXPANSION, HAWAII

CONSTRUCTION FOR ADDITIONAL PARKING SPACES AT THE EXISTING EMPLOYEE PARKING LOT TO RELIEVE OVERFLOW CONDITIONS.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		CONSTRUCTION		1,500			
		TOTAL FUNDING	TRN	1,500E			E
TRN131 - KAHULUI AIRPORT							
9.	D08E	KAHULUI AIRPORT GENERAL PURPOSE APRON AND ASAP BUILDING, MAUI					
		CONSTRUCTION FOR AN AVIATION FACILITY INCLUDING GENERAL PURPOSE APRON AND ALIEN SPECIES ACTION PLAN (ASAP) BUILDING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		21,620			
		TOTAL FUNDING	TRN	7,500E			E
			TRN	14,120N			N
9.01.	D04L	KAHULUI AIRPORT TERMINAL DEVELOPMENT, MAUI					
		CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING ADDITIONAL TICKET LOBBIES, CONCESSION AND BAGGAGE CLAIM FACILITIES, SYSTEM IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				12,470	
		TOTAL FUNDING	TRN		E	5,700E	
			TRN		N	6,770N	
9.02.	D05A	KAHULUI AIRPORT RUNWAY SAFETY AREA IMPROVEMENTS, MAUI					
		DESIGN OF THE RUNWAY SAFETY AREA IMPROVEMENTS INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM AND BOX CULVERT, CONSTRUCTION OF A NEW SERVICE ROAD, RELOCATION OF PERIMETER FENCING AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				1,000	
		TOTAL FUNDING	TRN		B	1,000B	
9.03.	D08L	KAHULUI AIRPORT, INLINE BAGGAGE SYSTEM IMPROVEMENTS, MAUI					
		CONSTRUCTION OF INLINE BAGGAGE SYSTEM IMPROVEMENTS INCLUDING EXPLOSIVE DETECTION SYSTEMS, BAGGAGE BELT CONVEYORS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				20,425	
		TOTAL FUNDING	TRN		E	11,800E	
			TRN		N	8,625N	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
TRN141 - MOLOKAI AIRPORT							
9.04.	D55B	MOLOKAI AIRPORT ARFF STATION IMPROVEMENTS, MOLOKAI					
		DESIGN FOR THE MOLOKAI AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS INCLUDING SITE WORK, DEMOLITION AND RECONSTRUCTION AND REPLACEMENT OF A BUILDING, UTILITIES, DRIVEWAY WITH A PARKING AREA AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					300
		TOTAL FUNDING	TRN		E		300E
TRN151 - LANAI AIRPORT							
9.05.	D70D	LANAI AIRPORT ARFF STATION IMPROVEMENTS, LANAI					
		DESIGN FOR THE LANAI AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS INCLUDING SITE WORK, DEMOLITION AND RECONSTRUCTION AND REPLACEMENT OF A BUILDING, UTILITIES, DRIVEWAY WITH A PARKING AREA AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					150
		TOTAL FUNDING	TRN		E		150E
TRN161 - LIHUE AIRPORT							
10.	E03F	LIHUE AIRPORT HELIPORT IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR A HELIPORT AT THE AIRPORT.					
		CONSTRUCTION		9,000			
		TOTAL FUNDING	TRN	9,000E			E
11.	E03J	LIHUE AIRPORT, BAGGAGE CLAIM IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR IMPROVEMENTS TO BAGGAGE FACILITIES TO ACCOMMODATE THE LARGER BAGGAGE CAPACITY OF WIDE-BODY AIRCRAFT.					
		CONSTRUCTION		2,500			
		TOTAL FUNDING	TRN	2,500B			B
TRN195 - AIRPORTS ADMINISTRATION							
12.	F04J	AIRPORT PLANNING STUDY, STATEWIDE					
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS. THIS PROJECT IS DEEMED NECESSARY					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		PLANS		1,000		1,000	
		TOTAL FUNDING	TRN	900 B		900 B	
			TRN	100 N		100 N	
13.	F05A	AIRPORT FIRE ALARM SYSTEM IMPROVEMENTS, STATEWIDE					
CONSTRUCTION FOR FIRE ALARM SYSTEM IMPROVEMENTS AT AIRPORTS, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		CONSTRUCTION		3,000			
		TOTAL FUNDING	TRN	1,000 B			B
			TRN	2,000 N			N
14.	F06G	LAND ACQUISITION, STATEWIDE					
LAND ACQUISITION FOR AVIGATIONAL EASEMENTS, PROPERTY ACQUISITION, AND RELATED COSTS SUCH AS TITLE SEARCH, BOUNDARY SURVEYS, AND LAND APPRAISALS AT AIRPORTS STATEWIDE.							
		LAND		100			
		TOTAL FUNDING	TRN	100 B			B
15.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECT STAFF COSTS, STATEWIDE					
PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS.							
		PLANS		100		109	
		DESIGN		800		860	
		CONSTRUCTION		850		931	
		TOTAL FUNDING	TRN	1,750 B		1,900 B	
16.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE					
DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.							
		DESIGN		300		300	
		CONSTRUCTION		2,700		2,700	
		TOTAL FUNDING	TRN	3,000 B		3,000 B	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
17.	F08H	PROJECT DEFINITION REPORTS, STATEWIDE					
		PLANS FOR PROJECT SCOPING FOR PROJECTS UNDER THE CAPITAL IMPROVEMENT PROGRAM AT STATEWIDE AIRPORTS.					
		PLANS			750		
		TOTAL FUNDING	TRN		750 B		B
18.	F08N	AIRPORT ARCHITECTURAL BARRIER REMOVAL, STATEWIDE					
		CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			2,000		
		TOTAL FUNDING	TRN		1,000 B		B
			TRN		1,000 N		N
19.	F08O	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE					
		CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE.					
		CONSTRUCTION			125		125
		TOTAL FUNDING	TRN		125 B		125 B
20.	F08Q	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE					
		DESIGN AND CONSTRUCTION OF VARIOUS PROJECTS REQUIRING ARCHITECTURAL OR ENGINEERING CONSULTANT SUPPORT AT AIRPORTS STATEWIDE.					
		DESIGN			250		250
		CONSTRUCTION			250		250
		TOTAL FUNDING	TRN		500 B		500 B
21.	F08S	RIAT RECOMMENDATIONS FOR AIRFIELD IMPROVEMENTS, STATEWIDE					
		CONSTRUCTION FOR RUNWAY INCURSION ACTION TEAM (RIAT) RECOMMENDATIONS FOR AIRFIELD IMPROVEMENTS REQUIRED BY THE FAA AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			2,500		
		TOTAL FUNDING	TRN		900 B		B
			TRN		1,600 N		N
21.01.	F08L	AIRFIELD LIGHTS AND SIGN REPLACEMENT, STATEWIDE					
		CONSTRUCTION OF TAXIWAY LIGHTS, AIRFIELD SIGNS AND RELATED APPURTENANCES AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					8,220
		TOTAL FUNDING	TRN		B		2,700 B
			TRN		N		5,520 N

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TRN301 - HONOLULU HARBOR							
22.	J04	IMPROVEMENTS TO FACILITIES AT PIERS 19-29, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AND PIER AREAS INCLUDING VESSEL BERTHING FACILITIES, UTILITIES, ROADWAYS, PAVED PARKING, AND OTHER IMPROVEMENTS.					
		DESIGN			250		
		CONSTRUCTION					2,500
		TOTAL FUNDING	TRN		250B		2,500B
23.	J06	SAND ISLAND CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING, UTILITIES, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			24,500		11,500
		TOTAL FUNDING	TRN		24,500E		11,500E
24.	J26	CRUISE TERMINAL IMPROVEMENTS AT PIER 2, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR RENOVATIONS AND SITE IMPROVEMENTS TO THE EXISTING FACILITIES FOR USE AS A CRUISE TERMINAL, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION			10,000		10,000
		TOTAL FUNDING	TRN			B	10,000B
			TRN		10,000E		E
24.01.	J07	PIER 51B CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, DRAINAGE, UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION					20,000
		TOTAL FUNDING	TRN			E	20,000E
24.02.	J23	PIERS 19-20 IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR PIER IMPROVEMENTS INCLUDING THE UPGRADING OF VESSEL BERTHING FACILITIES, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION					600
		TOTAL FUNDING	TRN			B	600B
24.03.	J34	PIERS 36 TO 38 IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT THE DOMESTIC COMMERCIAL FISHING VILLAGE INCLUDING ENVIRONMENTAL STUDIES AND MITIGATION, UTILITY SERVICES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		ROADWAYS, PARKING, AND OTHER RELATED IMPROVEMENTS.					
		PLANS					100
		DESIGN					500
		CONSTRUCTION					2,400
		TOTAL FUNDING	TRN		B		3,000B
24.04.	J35	KEEHI INDUSTRIAL PARK IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR SITE IMPROVEMENTS TO THE MARITIME-INDUSTRIAL SUBDIVISION INCLUDING ROADWAY UPGRADES, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION					450
		TOTAL FUNDING	TRN		B		450B
TRN303 - KALAELOA BARBERS POINT HARBOR							
25.	J10	KALAELOA-BARBERS POINT HARBOR MODIFICATIONS, OAHU					
		DESIGN FOR DEEPENING OF THE TURNING BASIN AND CHANNEL MODIFICATIONS AT KALAELOA-BARBERS POINT HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					400
		TOTAL FUNDING	TRN		B		400B
TRN311 - HILO HARBOR							
25.01.	L06	CONTAINER FACILITY IMPROVEMENTS, HILO HARBOR, HAWAII					
		DESIGN AND CONSTRUCTION FOR HARBOR IMPROVEMENTS INCLUDING MODIFICATIONS TO PIERS, YARDS, SHEDS, UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					75
		CONSTRUCTION					500
		TOTAL FUNDING	TRN		B		575B
TRN331 - KAHULUI HARBOR							
26.	M09	BARGE TERMINAL IMPROVEMENTS, KAHULUI HARBOR, MAUI					
		CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARDS, SHEDS, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			1,500		
		TOTAL FUNDING	TRN		1,500E		E
TRN361 - NAWILIWILI HARBOR							
27.	K07	NAWILIWILI HARBOR CHANNEL MODIFICATIONS, KAUAI					
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE ENTRANCE CHANNEL AT NAWILIWILI HARBOR. THIS PROJECT IS DEEMED					

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				APPROPRIATIONS (IN 000's)			
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NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		PLANS			300		
		TOTAL FUNDING	TRN		300B		B
TRN395 - HARBORS ADMINISTRATION							
28.	100	HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECTS STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS			750		890
		TOTAL FUNDING	TRN		750B		890B
29.	I01	HARBOR PLANNING, STATEWIDE					
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.					
		PLANS			350		350
		TOTAL FUNDING	TRN		350B		350B
30.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					
		DESIGN			75		75
		CONSTRUCTION			300		300
		TOTAL FUNDING	TRN		375B		375B
31.	I04	COMMERCIAL HARBORS SEWER SYSTEM IMPROVEMENTS, STATEWIDE					
		CONSTRUCTION FOR THE PHASE-OUT OF LARGE CAPACITY CESSPOOLS AT COMMERCIAL HARBOR FACILITIES AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		1,000B		B
32.	I05	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					
		DESIGN			50		50
		CONSTRUCTION			250		250
		TOTAL FUNDING	TRN		300B		300B

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				APPROPRIATIONS (IN 000's)			
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33.	I07	ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES TO PROVIDE A SAFE WORKING ENVIRONMENT FOR MARITIME BUSINESSES AND PERSONNEL WORKING AT HARBOR FACILITIES.					
		PLANS		500			
		DESIGN		500			
		CONSTRUCTION		1,000			
		TOTAL FUNDING	TRN	2,000B			B
34.	I13	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE					
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION PROJECTS AT HARBOR FACILITIES STATEWIDE.					
		CONSTRUCTION		1,000			
		TOTAL FUNDING	TRN	1,000B			B
35.	I15	SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF SECURITY SYSTEM IMPROVEMENTS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		500			
		DESIGN		1,000			
		CONSTRUCTION		2,750			
		TOTAL FUNDING	TRN	3,250B			B
			TRN	1,000N			N
36.	I16	INTELLIGENT TRANSPORTATION SYSTEMS STUDIES, STATEWIDE					
		PLANS FOR STUDIES TO IMPROVE THE INTERMODAL MOVEMENT OF CARGO BETWEEN WATER TRANSPORTATION TERMINALS AND LANDSIDE DESTINATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1,250			
		TOTAL FUNDING	TRN	250B			B
			TRN	1,000N			N
TRN501 - OAHU HIGHWAYS							
37.	S269	KAMEHAMEHA HIGHWAY, SOUTH PUNALUU BRIDGE REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACEMENT OF SOUTH PUNALUU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		12,250			
		TOTAL FUNDING	TRN	2,450E			E
			TRN	9,800N			N

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				APPROPRIATIONS (IN 000's)			
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38.	S271	INTERSTATE ROUTE H-1 AND MOANALUA FREEWAYS IMPROVEMENTS, PUULOA INTERCHANGE TO KAPIOLANI INTERCHANGE, OAHU					
		CONSTRUCTION FOR AN ADDITIONAL LANE ON THE H-1 FREEWAY EASTBOUND LANES FROM THE VICINITY OF MIDDLE STREET TO THE VICINITY OF VINEYARD BOULEVARD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		6,500			
		TOTAL FUNDING	TRN	1,300 E			E
			TRN	5,200 N			N
39.	S276	KALANIANAOLE HIGHWAY IMPROVEMENTS, RETAINING WALL AT MAKAPUU, OAHU					
		CONSTRUCTION FOR CONSTRUCTING AND/OR REPAIRING A RETAINING WALL ALONG KALANIANAOLE HIGHWAY IN THE VICINITY OF MAKAPUU POINT, INCLUDING SUBSURFACE INVESTIGATION AND SLOPE PROTECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		6,000			
		TOTAL FUNDING	TRN	1,200 E			E
			TRN	4,800 N			N
40.	S280	INTERSTATE ROUTE H-1, PEARL CITY VIADUCT AND WAIMALU VIADUCT IMPROVEMENTS, OAHU					
		DESIGN FOR THE REPLACING, REPAIRING, AND/OR STRENGTHENING OF THE PEARL CITY AND WAIMALU VIADUCT'S CONCRETE DECK AND OTHER STRUCTURAL COMPONENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		1,500			
		TOTAL FUNDING	TRN	300 E			E
			TRN	1,200 N			N
41.	S287	KAMEHAMEHA HIGHWAY BIKEWAY, VICINITY OF RADFORD DRIVE TO THE ARIZONA MEMORIAL, OAHU					
		CONSTRUCTION FOR A BIKE LANE ON KAMEHAMEHA HIGHWAY FROM THE VICINITY OF RADFORD DRIVE TO THE ARIZONA MEMORIAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		1,250			
		TOTAL FUNDING	TRN	250 E			E
			TRN	1,000 N			N
42.	S298	KAMEHAMEHA HIGHWAY, KOKOLOLIO STREAM BRIDGE REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACEMENT OF KOKOLOLIO STREAM BRIDGE. THIS PROJECT IS					

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				APPROPRIATIONS (IN 000's)			
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DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
CONSTRUCTION				4,100			
TOTAL FUNDING				TRN	820E		E
				TRN	3,280N		N
43.	S313	INTERSTATE ROUTE H-1, ADDITION AND MODIFICATION OF FREEWAY ACCESS, MAKAKILO TO PALAILAI INTERCHANGES, OAHU					
PLANS FOR IMPROVING/MODIFYING THE MAKAKILO AND PALAILAI INTERCHANGES AND CONSTRUCTING A NEW INTERCHANGE (KAPOLEI INTERCHANGE). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
PLANS						2,000	
TOTAL FUNDING				TRN	E	400E	
				TRN	N	1,600N	
44.	S314	KAMEHAMEHA HIGHWAY, UPPER POAMOHO STREAM BRIDGE REPLACEMENT, OAHU					
DESIGN FOR REPLACEMENT OF A MULTI-GIRDER REINFORCED CONCRETE BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF WAHIAWA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
DESIGN				2,275			
TOTAL FUNDING				TRN	455E		E
				TRN	1,820N		N
45.	S315	KAMEHAMEHA HIGHWAY, REHABILITATION OF LAIELOA STREAM BRIDGE, OAHU					
DESIGN FOR REHABILITATION OF A CONCRETE SLAB BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF LAIE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
DESIGN						725	
TOTAL FUNDING				TRN	E	145E	
				TRN	N	580N	
46.	S316	KAMEHAMEHA HIGHWAY, KAALAEA STREAM BRIDGE REPLACEMENT, OAHU					
DESIGN FOR REPLACEMENT OF A TWO SPAN CONCRETE BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF KAHALUU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
DESIGN						1,000	
TOTAL FUNDING				TRN	E	200E	
				TRN	N	800N	

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47.	S317	KAMEHAMEHA HIGHWAY, REHABILITATION OF WAIPILOPILO STREAM BRIDGE, OAHU					
		DESIGN FOR REHABILITATION OF A CONCRETE TEE-BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF HAUULA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					600
		TOTAL FUNDING	TRN		E		120E
			TRN		N		480N
48.	S318	HIGHWAY LIGHTING REPLACEMENT AT VARIOUS LOCATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING HIGHWAY LIGHTING SYSTEM ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			900		
		CONSTRUCTION					3,000
		TOTAL FUNDING	TRN		180E		600E
			TRN		720N		2,400N
49.	S319	PEARL CITY, WAIANAE AND KANEOHE BASEYARDS, WASHDOWN RACKS, OAHU					
		DESIGN FOR INSTALLING WASHDOWN RACKS TO INCLUDE A WATER RECYCLING UNIT, STEAM PRESSURE WASHERS, AND A CONCRETE PAD FOR COMPLIANCE WITH THE DEPARTMENT OF HEALTH REGULATIONS AND THE CLEAN WATER ACT.					
		DESIGN			250		
		TOTAL FUNDING	TRN		250E		E
50.	S320	KAMEHAMEHA HIGHWAY WIDENING, LANIKUHANA AVENUE TO KA UKA BOULEVARD, OAHU					
		PLANS FOR WIDENING KAMEHAMEHA HIGHWAY TO A FOUR-LANE DIVIDED FACILITY WITH SHOULDERS FOR BICYCLES AND DISABLED VEHICLES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1,500
		TOTAL FUNDING	TRN		E		300E
			TRN		N		1,200N
51.	S321	INTERSTATE ROUTE H-1 IMPROVEMENTS, EASTBOUND, WARD AVENUE ON-RAMP TO UNIVERSITY INTERCHANGE, OAHU					
		PLANS FOR IMPROVING EASTBOUND TRAFFIC FLOW ON INTERSTATE ROUTE H-1 FROM WARD AVENUE ON-RAMP TO UNIVERSITY INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1,500		
		TOTAL FUNDING	TRN		300E		E

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			TRN	1,200	N		N
52.	S322	INTERSTATE ROUTE H-1, WAIAWA INTERCHANGE, WESTBOUND, WAIPAHU OFF-RAMP IMPROVEMENTS, OAHU					
		DESIGN FOR WIDENING THE WAIPAHU OFF-RAMP FROM ONE TO TWO LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				3,000	
		TOTAL FUNDING	TRN		E	600E	
			TRN		N	2,400N	
53.	S323	INTERSTATE ROUTE H-1, ADDITIONAL WESTBOUND LANE, VICINITY OF THE PEARL CITY VIADUCT TO PAIWA INTERCHANGE, OAHU					
		DESIGN FOR CONSTRUCTING AN ADDITIONAL H-1 WESTBOUND LANE THROUGH THE WAIAWA INTERCHANGE AND AN ADDITIONAL LANE TO THE OFF-RAMP AT THE PAIWA INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		2,500			
		TOTAL FUNDING	TRN	500E			E
			TRN	2,000N			N
54.	SP9901	FORT WEAVER ROAD WIDENING, VICINITY OF LAULAUNUI STREET TO VICINITY OF GEIGER ROAD, OAHU					
		CONSTRUCTION FOR WIDENING OF FORT WEAVER ROAD TO A SIX-LANE FACILITY FROM VICINITY OF LAULAUNUI STREET TO THE VICINITY OF GEIGER ROAD, INCLUDING INSTALLING A TRAFFIC CAMERA SYSTEM FROM WAIPAHU STREET TO PAPIPI ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		15,000			
		TOTAL FUNDING	TRN	3,000E			E
			TRN	12,000N			N
55.	SP0301	FARRINGTON HIGHWAY IMPROVEMENTS, HAKIMO ROAD TO KAUKAMA ROAD, OAHU					
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS BETWEEN HAKIMO ROAD AND KAUKAMA ROAD INCLUDING A MEDIAN, PAVED SHOULDERS, SIDEWALKS, UTILITY WORK, AND OTHER IMPROVEMENTS.					
		DESIGN		2,500			
		CONSTRUCTION		22,500			
		TOTAL FUNDING	TRN	25,000E			E
56.	SP0302	FRANKLIN D. ROOSEVELT AVENUE EXTENSION, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE EXTENSION OF FRANKLIN D. ROOSEVELT AVENUE TO MEET THE INTERSECTION OF KAMOKILA BLVD/KAPOLEI PARKWAY.					

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				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		LAND		2,000			
		DESIGN		275			
		CONSTRUCTION		1,850			
		TOTAL FUNDING	TRN	4,125E			E
57.	SP0303	KAHEKILI HIGHWAY CONTRAFLOW LANE, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A CONTRAFLOW LANE FROM HAIKU ROAD TO HUI IWA STREET/VALLEY OF THE TEMPLES.					
		PLANS		1			
		DESIGN		49			
		CONSTRUCTION		450			
		TOTAL FUNDING	TRN	500E			E
58.	SP0304	KAMEHAMEHA HIGHWAY IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A LEFT TURN FROM KAMEHAMEHA HIGHWAY INTO THE KAHUKU HIGH SCHOOL CAMPUS ENTRANCE.					
		PLANS		5			
		DESIGN		20			
		CONSTRUCTION		75			
		TOTAL FUNDING	TRN	100E			E
59.	SP0305	KAMEHAMEHA HIGHWAY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR CROSSWALKS ON KAMEHAMEHA HIGHWAY NEAR BUS STOPS FROM KAHALUU TO KAWELA BAY.					
		DESIGN		15			
		CONSTRUCTION		50			
		TOTAL FUNDING	TRN	65E			E
60.	SP0306	LUNALILO STREET ON-RAMP/OFF-RAMP TRAFFIC STUDY, OAHU					
		PLANS FOR STUDIES TO SEPARATE ON-RAMP WESTBOUND FLOW AT LUNALILO STREET FROM TRAFFIC EXITING H-1 FREEWAY AT VINEYARD.					
		PLANS		200			
		TOTAL FUNDING	TRN	200E			E
61.	S325	KUNIA ROAD IMPROVEMENTS, VICINITY OF HONOWAI STREET TO VICINITY OF SOUTH KUPUNA LOOP, OAHU					
		CONSTRUCTION FOR WIDENING KUNIA ROAD, INSTALLING TRAFFIC SIGNALS AT HONOWAI STREET, AND CONSTRUCTING CURB AND GUTTER, CONCRETE SIDEWALK, AND DRAINAGE STRUCTURES.					
		CONSTRUCTION		2,000			
		TOTAL FUNDING	TRN	2,000E			E
61.01.	S257	CASTLE HILLS ACCESS ROAD, DRAINAGE IMPROVEMENTS, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR STORM RETENTION STRUCTURES AND EROSION CONTROL TO REPAIR STORM DAMAGE AND EROSION AND CONSTRUCTING CONCRETE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		SIDEWALKS, WHEELCHAIR RAMPS, AND OTHER RELATED IMPROVEMENTS.					
		LAND					100
		CONSTRUCTION					6,000
		TOTAL FUNDING	TRN		X		6,100X
61.02.	S270	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, OAHU					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT TRAFFIC FLOW.					
		DESIGN					100
		CONSTRUCTION					1,000
		TOTAL FUNDING	TRN		E		1,100E
61.03.	S273	KAMEHAMEHA HIGHWAY, INTERSECTION IMPROVEMENTS AT KUILIMA DRIVE, OAHU					
		LAND ACQUISITION FOR A LEFT TURN LANE ON KAMEHAMEHA HIGHWAY INTO KUILIMA DRIVE, REPLACING O'IO STREAM BRIDGE AND OTHER RELATED IMPROVEMENTS.					
		LAND					100
		TOTAL FUNDING	TRN		X		100X
61.04.	S297	KAMEHAMEHA HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACEMENT OF KAWELA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					2,000
		TOTAL FUNDING	TRN		E		400E
			TRN		N		1,600N
61.05.	S299	KAMEHAMEHA HIGHWAY, NORTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACEMENT OF NORTH KAHANA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					5,000
		TOTAL FUNDING	TRN		E		1,000E
			TRN		N		4,000N
61.06.	S307	KAMEHAMEHA HIGHWAY, KALUANUI STREAM BRIDGE REPLACEMENT, OAHU					
		LAND ACQUISITION FOR REPLACEMENT OF KALUANUI STREAM BRIDGE. THIS PROJECT IS					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REPLACEMENT.					
		LAND					100
		TOTAL FUNDING	TRN		E		20E
			TRN		N		80N
61.07.	S324	FARRINGTON HIGHWAY, REPLACEMENT OF MAIPALAOA BRIDGE, OAHU					
		LAND ACQUISITION AND DESIGN FOR REPLACEMENT OF A PRESTRESSED TEE-BEAM BRIDGE ON FARRINGTON HIGHWAY IN THE VICINITY OF MAILI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					350
		DESIGN					2,000
		TOTAL FUNDING	TRN		E		470E
			TRN		N		1,880N
61.08.	S326	KALANIANA'OLE HIGHWAY MEDIAN IMPROVEMENTS, VICINITY OF OLOMANA GOLF COURSE, OAHU					
		DESIGN FOR MEDIAN IMPROVEMENTS, WIDENING OF THE ROADWAY, INSTALLING SIGNS, MARKINGS, AND OTHER INCIDENTAL IMPROVEMENTS IN THE VICINITY OF OLOMANA GOLF COURSE.					
		DESIGN					350
		TOTAL FUNDING	TRN		E		350E
61.09.	SP9101	NORTH/SOUTH ROAD, KAPOLEI PARKWAY TO VICINITY OF INTERSTATE ROUTE H-1, OAHU					
		CONSTRUCTION FOR NORTH/SOUTH ROAD FROM KAPOLEI PARKWAY TO VICINITY OF THE H-1 FREEWAY. IMPROVEMENTS INCLUDE A MULTI-LANE HIGHWAY AND AN INTERCHANGE AT THE H-1 FREEWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					24,000
		TOTAL FUNDING	TRN		E		4,800E
			TRN		N		19,200N
61.10.	SP9805	KAMEHAMEHA HIGHWAY-KAHEKILI HIGHWAY INTERSECTION IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR PERMANENT IMPROVEMENTS AT THE KAMEHAMEHA HIGHWAY AND KAHEKILI HIGHWAY INTERSECTION.					
		CONSTRUCTION					2,250
		TOTAL FUNDING	TRN		E		2,250E
61.11.		FARRINGTON HIGHWAY IMPROVEMENTS, H-1 CROSSOVER TO KUNIA CROSSOVER, OAHU					
		DESIGN AND CONSTRUCTION TO REPAIR, REPAVE, AND IMPROVE FARRINGTON HIGHWAY FROM THE H-1 CROSSOVER TO THE KUNIA CROSSOVER.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN					250
		CONSTRUCTION					4,750
		TOTAL FUNDING	TRN		B		5,000B

TRN511 - HAWAII HIGHWAYS

62. T011 PUAINAKO STREET WIDENING, KANOELEHUA AVENUE TO KOMOHANA STREET, HAWAII

LAND ACQUISITION AND DESIGN TO WIDEN AND REALIGN PUAINAKO STREET FROM 2 TO 4 LANES FROM KANOELEHUA AVENUE TO KOMOHANA STREET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

LAND		100		500
DESIGN		350		
TOTAL FUNDING	TRN	450E		100E
	TRN	N		400N

63. T077 GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, HAWAII

DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE END POSTS AND CRASH ATTENUATOR, AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		100		
CONSTRUCTION		1,400		1,400
TOTAL FUNDING	TRN	300E		280E
	TRN	1,200N		1,120N

64. T080 KAWAIHAE ROAD, WAIKAKA STREAM BRIDGE REPLACEMENT AND REALIGNMENT, HAWAII

DESIGN FOR REPLACING THE EXISTING WAIKAKA STREAM BRIDGE, REALIGNING THE BRIDGE APPROACHES, RECONSTRUCTING THE ROUTE 19/ ROUTE 250 INTERSECTION, AND INSTALLING SAFETY IMPROVEMENTS.

DESIGN		1,000		
TOTAL FUNDING	TRN	1,000X		X

65. T118 TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, HAWAII

DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.

DESIGN		100		
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		CONSTRUCTION		1,750			
		TOTAL FUNDING	TRN	1,850E			E
66.	T133	VOLCANO ROAD DRAINAGE IMPROVEMENTS, KULANI ROAD TO MOUNTAIN VIEW SCHOOL, HAWAII					
		DESIGN FOR DRAINAGE IMPROVEMENTS, INCLUDING INSTALLING A CONCRETE-LINED DITCH WITH GRATING, AN ASPHALT-LINED DITCH, GUARDRAILS, CULVERTS, AND FENCING.					
		DESIGN		350			
		TOTAL FUNDING	TRN	350E			E
67.	T134	HONOKAA BASEYARD IMPROVEMENTS, HAWAII					
		DESIGN FOR IMPROVEMENTS TO HONOKAA BASEYARD, INCLUDING EXTENDING THE EXISTING GARAGE AND CONSTRUCTING A STORAGE ROOM.					
		DESIGN		100			
		TOTAL FUNDING	TRN	100E			E
68.	T135	MAMALAHOA HIGHWAY DRAINAGE IMPROVEMENTS AT KAWA, HAWAII					
		DESIGN FOR DRAINAGE IMPROVEMENTS, INCLUDING THE INSTALLATION OF DRAINAGE BOX CULVERTS AND RAISING OF THE ROADWAY.					
		DESIGN		350			
		TOTAL FUNDING	TRN	350E			E
69.	T136	HAWAII BELT ROAD DRAINAGE IMPROVEMENTS, VICINITY OF HAKALAU BRIDGE, HAWAII					
		DESIGN FOR DRAINAGE IMPROVEMENTS, INCLUDING INSTALLING A DRAINAGE SPILLWAY AND BOX CULVERTS.					
		DESIGN				350	
		TOTAL FUNDING	TRN		E	350E	
69.01.	T127	KEAAU-PAHOA ROAD SHOULDER LANE CONVERSION, KEAAU BYPASS ROAD TO SHOWER DRIVE, HAWAII					
		LAND ACQUISITION FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDER AND CONSTRUCTING NEW SHOULDERS ON THE INBOUND SIDE OF THE HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					300
		TOTAL FUNDING	TRN		E		60E
			TRN		N		240N
69.02.	T132	VOLCANO ROAD INTERSECTION IMPROVEMENTS AT KULANI ROAD, HAWAII					
		LAND ACQUISITION FOR CONSTRUCTING LEFT TURN LANES AT THE KULANI ROAD INTERSECTION. THIS PROJECT IS DEEMED					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					500
		TOTAL FUNDING	TRN		E		100E
			TRN		N		400N
69.03.	TP0001	KOHALA MOUNTAIN ROAD REALIGNMENT, VICINITY OF KAHUA RANCH, HAWAII					
		LAND ACQUISITION AND DESIGN FOR THE REALIGNMENT AND WIDENING OF ROADWAY AT KAHUA RANCH AND THE INSTALLATION OF GUARDRAILS, CULVERTS, SIGNS, AND PAVEMENT MARKINGS.					
		LAND					100
		DESIGN					150
		TOTAL FUNDING	TRN		E		250E
TRN531 - MAUI HIGHWAYS							
70.	V42	HALEAKALA HIGHWAY WIDENING, PUKALANI BYPASS TO HANA HIGHWAY, MAUI					
		CONSTRUCTION FOR THE WIDENING OF HALEAKALA HIGHWAY FROM 3 TO 4 LANES BETWEEN PUKALANI BYPASS TO HANA HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		19,525			
		TOTAL FUNDING	TRN	3,905E			E
			TRN	15,620N			N
71.	V74	PAIA BYPASS, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR ALTERNATIVE TRAFFIC IMPROVEMENTS IN THE VICINITY OF PAIA TOWN. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		100			
		DESIGN		1,500			
		CONSTRUCTION					37,500
		TOTAL FUNDING	TRN	1,600E			7,500E
			TRN		N		30,000N
72.	V78	HONOAPIILANI HIGHWAY PASSING LANES, MAALAEA HARBOR TO PUAMANA, MAUI					
		DESIGN FOR CONSTRUCTING PASSING LANES ON HONOAPIILANI HIGHWAY BETWEEN MAALAEA HARBOR AND PUAMANA.					
		DESIGN		1,500			
		TOTAL FUNDING	TRN	1,500X			X
73.	V93	WAIEHU BEACH ROAD, REHABILITATION OF IAO STREAM BRIDGE, MAUI					
		LAND ACQUISITION AND DESIGN FOR REHABILITATION OF A CONCRETE TEE-BEAM					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		BRIDGE ON WAIHEHU BEACH ROAD IN THE VICINITY OF WAILUKU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND DESIGN		900			300
		TOTAL FUNDING	TRN	180E			60E
			TRN	720N			240N
74.	V94	HONOAPIILANI HIGHWAY, REPLACEMENT OF HONOLUA BRIDGE, MAUI					
		DESIGN FOR REPLACEMENT OF A CONCRETE TEE-BEAM BRIDGE ON HONOAPIILANI HIGHWAY IN THE VICINITY OF HONOLUA BAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					750
		TOTAL FUNDING	TRN		E		150E
			TRN		N		600N
75.	V95	HALEAKALA HIGHWAY WIDENING AT MILEPOST 0.8, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR WIDENING THE HIGHWAY FROM ONE TO TWO LANES, EXTENDING A BOX CULVERT, AND CONSTRUCTING HEADWALLS AND WING WALLS.					
		LAND DESIGN		60			45
		CONSTRUCTION					860
		TOTAL FUNDING	TRN	60E			905E
76.	V073	PUUNENE AVENUE/MOKULELE HIGHWAY WIDENING, KUIHELANI HIGHWAY TO PIILANI HIGHWAY, MAUI					
		CONSTRUCTION FOR THE WIDENING OF PUUNENE AVENUE AND MOKULELE HIGHWAY FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		22,500			
		TOTAL FUNDING	TRN	4,500E			E
			TRN	18,000N			N
77.	P30013	HONOAPIILANI HIGHWAY WIDENING, LAHAINA TO MAALAEA, MAUI					
		PLANS FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM LAHAINA TO MAALAEA.					
		PLANS		2,500			
		TOTAL FUNDING	TRN	2,500E			E
77.01.	V051	HONOAPIILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO LAUNIUPOKO, MAUI					
		CONSTRUCTION FOR A NEW ALIGNMENT OF HONOAPIILANI HIGHWAY FROM LAHAINALUNA ROAD TO THE VICINITY OF THE PROPOSED KEAWE STREET EXTENSION, INCLUDING AN UNDERPASS AT LAHAINALUNA ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				30,000	
		TOTAL FUNDING	TRN		E	6,000E	
			TRN		N	24,000N	
77.02.	V063	KAHULUI AIRPORT ACCESS ROAD, MAUI					
		CONSTRUCTION FOR A PORTION OF THE NEW ACCESS ROAD TO KAHULUI AIRPORT FROM THE VICINITY OF PUUNENE AVENUE TO HANA HIGHWAY. INCLUDES AN AT-GRADE INTERSECTION AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, HIGHWAY LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				19,000	
		CONSTRUCTION				3,800E	
		TOTAL FUNDING	TRN		E	15,200N	
			TRN		N		
77.03.	VP0104	HONOAPIILANI HIGHWAY WIDENING, LAHAINALUNA ROAD TO SOUTH OF FRONT STREET, MAUI					
		LAND ACQUISITION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM TWO TO FOUR LANES FROM THE VICINITY OF LAHAINALUNA ROAD TO THE VICINITY OF FRONT STREET.				100	
		LAND				100E	
		TOTAL FUNDING	TRN		E		
TRN541 - MOLOKAI HIGHWAYS							
78.	W08	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI					
		CONSTRUCTION TO BUILD ASPHALT CONCRETE PAVED SHOULDERS AND INSTALLING AND/OR UPGRADING EXISTING GUARDRAIL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			700		
		TOTAL FUNDING	TRN		140E		E
			TRN		560N		N
79.	W012	MAUNALOA HIGHWAY SLOPE STABILIZATION AT MP 13 AND MP 14.3, MOLOKAI					
		DESIGN FOR THE STABILIZATION OF THE EMBANKMENT AT MILE POST 13 AND MILE POST 14.3.					
		DESIGN			225		
		TOTAL FUNDING	TRN		225E		E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
TRN561 - KAUAI HIGHWAYS							
80.	X51	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS, AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		200			
		CONSTRUCTION		1,000		1,000	
		TOTAL FUNDING	TRN	280E		200E	
			TRN	920N		800N	
81.	X112	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		LAND		150			
		DESIGN				100	
		CONSTRUCTION				1,200	
		TOTAL FUNDING	TRN	150E		1,300E	
82.	X122	KUHIO HIGHWAY, ROUTE 560, SLOPE PROTECTION, HANAIE HILL, KAUAI					
		LAND ACQUISITION AND DESIGN FOR CONSTRUCTING SLOPE STABILIZATION AND PROTECTION.					
		LAND				100	
		DESIGN		200			
		TOTAL FUNDING	TRN	200E		100E	
83.	X123	WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MP 0-14, KAUAI					
		DESIGN FOR CONSTRUCTING PAVED SHOULDERS, INSTALLING GUARDRAIL, AND OTHER IMPROVEMENTS.					
		DESIGN				100	
		TOTAL FUNDING	TRN		E	100E	
84.	X124	KUHIO HIGHWAY, KAPAIA BRIDGE REPLACEMENT, KAUAI					
		DESIGN FOR REPLACEMENT OF A MULTI-TEE BEAM REINFORCED CONCRETE GIRDER BRIDGE ON KUHIO HIGHWAY IN THE VICINITY OF KAPAIA. THIS PROJECT IS DEEMED NECESSARY TO					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					1,300
		TOTAL FUNDING	TRN		E		260E
			TRN		N		1,040N
85.	X125	KAUMUALII HIGHWAY, OMAO BRIDGE REHABILITATION, KAUAI					
		LAND ACQUISITION AND DESIGN FOR REHABILITATION OF A CONCRETE TEE GIRDER BRIDGE ON KAUMUALII HIGHWAY IN THE VICINITY OF OMAO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					280
		DESIGN		1,050			
		TOTAL FUNDING	TRN	210E			60E
			TRN	840N			220N
86.	X126	POULI ROAD CONNECTOR, KUHIO HIGHWAY TO TEMPORARY KAPAA BYPASS, KAUAI					
		PLANS FOR CONSTRUCTING A NEW ROAD CONNECTING KUHIO HIGHWAY TO THE TEMPORARY KAPAA BYPASS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		500			
		TOTAL FUNDING	TRN	100E			E
			TRN	400N			N
86.01.	X118	KUAMOO ROAD, RETAINING WALL IN THE VICINITY OF MP 1.1, KAUAI					
		LAND ACQUISITION FOR REPLACING AN EXISTING WALL.					
		LAND					80
		TOTAL FUNDING	TRN		E		80E
86.02.	X120	KAUMUALII HIGHWAY, KUHIO HIGHWAY, AND KUAMOO ROAD RETAINING WALLS, KAUAI					
		LAND ACQUISITION FOR CONSTRUCTING AND/OR RECONSTRUCTING RETAINING WALLS AND OTHER APPURTENANT IMPROVEMENTS AT VARIOUS LOCATIONS.					
		LAND					100
		TOTAL FUNDING	TRN		E		100E
86.03.	X121	KUHIO HIGHWAY, REPLACEMENT OF WAINIHA BRIDGES, KAUAI					
		LAND ACQUISITION FOR REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3.					
		LAND					225
		TOTAL FUNDING	TRN		E		225E

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
TRN595 - HIGHWAYS ADMINISTRATION							
87.	X91	PEDESTRIAN FACILITIES AND ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CONSTRUCTING PEDESTRIAN FACILITIES AND INSTALLING AND/OR UPGRADING CURB RAMPS AND BUS STOPS ON STATE HIGHWAYS AND UPGRADING THE HIGHWAYS DIVISION BUILDING FACILITIES TO MEET COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		100			
		CONSTRUCTION		450		30,000	
		TOTAL FUNDING	TRN	190E		6,000E	
			TRN	360N		24,000N	
88.	X96	CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE					
		LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS. ALSO PROVIDES FOR THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.					
		LAND		200			
		TOTAL FUNDING	TRN	200E			E
89.	X97	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS AT VARIOUS LOCATIONS.					
		DESIGN		100			
		CONSTRUCTION		1,000		1,275	
		TOTAL FUNDING	TRN	1,100E		1,275E	
90.	X98	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		375			
		CONSTRUCTION				2,500	
		TOTAL FUNDING	TRN	375E		500E	
			TRN		N	2,000N	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
91.	X99	HIGHWAY PLANNING, STATEWIDE					
		PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH, ADVANCE PLANNING, AND SCOPING OF FEDERAL AID AND NON-FEDERAL AID HIGHWAY PROJECTS AND PROGRAMS, AND STUDIES REQUIRED BY THE FEDERAL HIGHWAYS ADMINISTRATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1,000		1,000
		TOTAL FUNDING	TRN		200E		200E
			TRN		800N		800N
92.	X221	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REPLACING EXISTING TRAFFIC SIGNAL SYSTEMS; PROVIDING INTERCONNECTION OF SIGNALIZED INTERSECTIONS; UPGRADING EXISTING TRAFFIC SIGNAL SYSTEMS TO MEET CURRENT AMERICANS WITH DISABILITIES STANDARDS; AND INSTALLING CLOSE CIRCUIT TELEVISION FOR THE FREEWAY MANAGEMENT SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			300		
		CONSTRUCTION			1,500		1,500
		TOTAL FUNDING	TRN		600E		300E
			TRN		1,200N		1,200N
93.	X225	HIGHWAYS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS.					
		PLANS			1		1
		LAND			1		1
		DESIGN			1		1
		CONSTRUCTION			14,497		14,497
		TOTAL FUNDING	TRN		8,500B		8,500B
			TRN		6,000N		6,000N
94.	X226	CLOSEOUT OF HIGHWAY CONSTRUCTION PROJECTS, STATEWIDE					
		CONSTRUCTION FOR COMPLETION OF OUTSTANDING CONSTRUCTION PROJECTS FOR POSTING OF AS-BUILT PLANS, OUTSTANDING UTILITY BILLINGS AND PAYMENTS TO OTHERS FOR PROJECT RELATED WORK.					
		CONSTRUCTION			250		250

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		TOTAL FUNDING	TRN TRN		249E 1N		249E 1N
95.	X227	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN FOR ROCKFALL/SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,000		
		TOTAL FUNDING	TRN TRN		200E 800N		E N
96.	X230	BIKEWAY IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN TO PROVIDE BICYCLE FACILITIES ON STATE HIGHWAYS. THE FEDERAL LEGISLATION TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA-21) PROVIDES FOR IMPROVING CONDITIONS AND SAFETY FOR THE BICYCLING MODE OF TRAVEL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,000		
		TOTAL FUNDING	TRN TRN		200E 800N		E N
97.	X231	HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY RENOVATION, STATEWIDE					
		DESIGN FOR RENOVATION AND IMPROVEMENTS TO THE HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY.					
		DESIGN					500
		TOTAL FUNDING	TRN		E		500E

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

1. 840401 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342-D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		12,515	12,515
TOTAL FUNDING	HTH	2,086C	2,086C
	HTH	10,429N	10,429N

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
2.	840402	SAFE DRINKING WATER REVOLVING FUND, STATEWIDE					
		CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS TO COMPLY WITH THE SAFE DRINKING WATER ACT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		9,664		9,664	
		TOTAL FUNDING	HTH	1,611 C		1,611 C	
			HTH	8,053 N		8,053 N	

LNR404 - WATER RESOURCES

2.01. G55E WAIHEE DEEP MONITOR WELL, MAUI

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A DEEP MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.

PLANS			25
LAND			10
DESIGN			25
CONSTRUCTION			321
EQUIPMENT			50
TOTAL FUNDING	LNR	C	431C

LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT

3. 950026 CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE

PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.

PLANS			1,750		1,750
TOTAL FUNDING	LNR		1,750C		1,750C

3.01. J00 ADA PUBLIC ACCESSIBILITY AT DLNR FACILITIES, STATEWIDE

CONSTRUCTION TO PROVIDE PUBLIC ACCESSIBILITY AT DLNR FACILITIES.

CONSTRUCTION					2,500
TOTAL FUNDING	LNR		C		2,500C

E. HEALTH

HTH595 - HEALTH RESOURCES ADMINISTRATION

1. P30014 ST. FRANCIS HEALTHCARE SYSTEM, MAUI

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ST. FRANCIS HEALTHCARE SYSTEM'S MAUI RENAL DIALYSIS CENTER. THIS PROJECT

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			1		
		CONSTRUCTION			748		
		EQUIPMENT			1		
		TOTAL FUNDING	HTH		750C		C
1.01.		HANA COMMUNITY HEALTH CENTER, MAUI					
		CONSTRUCTION FOR THE HANA COMMUNITY HEALTH CENTER'S NUTRITION TRAINING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					250
		TOTAL FUNDING	HTH		C		250C
1.02.		MOLOKAI GENERAL HOSPITAL, MOLOKAI					
		DESIGN AND CONSTRUCTION FOR COMPLETION OF PHASE II OF CAMPUS REDEVELOPMENT AND RENOVATION OF THE WOMEN'S HEALTH CENTER BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					1
		CONSTRUCTION					319
		TOTAL FUNDING	HTH		C		320C
1.03.		POHAI NANI GOOD SAMARITAN, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A WELLNESS CENTER FOR SENIORS ON OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					10
		DESIGN					40
		CONSTRUCTION					449
		EQUIPMENT					1
		TOTAL FUNDING	HTH		C		500C
1.04.		WAIANAE COAST COMPREHENSIVE HEALTH CENTER EXPANSION, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF EXISTING FACILITIES AT THE WAIANAE COAST COMPREHENSIVE HEALTH CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					100
		CONSTRUCTION					1,900
		TOTAL FUNDING	HTH		C		2,000C
1.05.		WAIMANALO HEALTH CENTER, RENOVATIONS AND IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO THE WAIMANALO HEALTH CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		CONSTRUCTION					148
		EQUIPMENT					1
		TOTAL FUNDING	HTH		C		150C

HTH210 - HAWAII HEALTH SYSTEMS CORPORATION

2. HHSC41 KOHALA HOSPITAL, EMERGENCY ELECTRICAL SYSTEM SWITCH, HAWAII

CONSTRUCTION TO ADD SWITCHGEAR
EQUIPMENT TO FACILITATE EMERGENCY POWER
DISTRIBUTION.

CONSTRUCTION		100	
TOTAL FUNDING	HTH	100C	C

3. HHSC43 KAUAI VETERANS MEMORIAL HOSPITAL, REROOF MEDICAL SURGICAL, SNF, NURSING ADMINISTRATION, PT, AND OT, KAUAI

DESIGN AND CONSTRUCTION TO REROOF THE
MEDICAL SURGICAL, SNF, NURSING
ADMINISTRATION, PT, AND OT AREAS.

DESIGN		25	
CONSTRUCTION		296	
TOTAL FUNDING	HTH	321C	C

4. P30015 HAWAII HEALTH SYSTEMS FOUNDATION, HAWAII

PLANS, LAND ACQUISITION, DESIGN,
CONSTRUCTION, AND EQUIPMENT FOR A LONG-
TERM CARE VETERANS HOME LOCATED ON THE
CAMPUS OF HILO MEDICAL CENTER.

PLANS		1	
LAND		1	
DESIGN		2,000	
CONSTRUCTION		6,998	
EQUIPMENT		1,000	
TOTAL FUNDING	HTH	10,000C	C

5. P30016 KULAMALU SKILLED NURSING/INTERMEDIATE CARE FACILITY, MAUI

LAND ACQUISITION, DESIGN, CONSTRUCTION,
AND EQUIPMENT FOR A SKILLED NURSING/
INTERMEDIATE CARE FACILITY.

LAND		2,900	358
DESIGN		850	2,936
CONSTRUCTION			12,955
EQUIPMENT			1
TOTAL FUNDING	HTH	3,750C	16,250C

- 5.01. HHSC44 HILO MEDICAL CENTER EMERGENCY ROOM RENOVATION, HAWAII

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT
TO RENOVATE THE EXISTING EMERGENCY ROOM,
EXPANSION, AND NEW RAMP.

PLANS			192
DESIGN			385
CONSTRUCTION			2,509
EQUIPMENT			1
TOTAL FUNDING	HTH	C	3,087C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
5.02.	HHSC45	LEAHI HOSPITAL, SUPPORT BUILDING REPAIR, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE THE SINCLAIR ROOF AND REPAIR ATHERTON FIRE ESCAPE STAIRWELL.					
		DESIGN					92
		CONSTRUCTION					361
		TOTAL FUNDING	HTH		C		453C
5.03.	HHSC46	KULA HOSPITAL, FIRE SPRINKLER SYSTEM, MAUI					
		DESIGN AND CONSTRUCTION FOR A FIRE SPRINKLER SYSTEM AT KULA HOSPITAL.					
		DESIGN					43
		CONSTRUCTION					390
		TOTAL FUNDING	HTH		C		433C
5.04.	HHSC47	KULA HOSPITAL, CORRECTION OF ADA DEFICIENCIES, MAUI					
		DESIGN AND CONSTRUCTION TO CORRECT ADA DEFICIENCIES TO INCLUDE RAMPS, BATHROOMS, ACCESS, RAILS, SIGNAGE, STAIRS, ETC.					
		DESIGN					16
		CONSTRUCTION					264
		TOTAL FUNDING	HTH		C		280C
5.05.	HHSC48	LEAHI HOSPITAL, LIFE SAFETY AND ADA RENOVATIONS, OAHU					
		DESIGN AND CONSTRUCTION TO BRING THE FACILITY UP TO CODE ON LIFE SAFETY AND ADA REQUIREMENTS.					
		DESIGN					34
		CONSTRUCTION					160
		TOTAL FUNDING	HTH		C		194C
5.06.	HHSC49	MALUHIA HOSPITAL, KITCHEN EQUIPMENT, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO INSTALL NEW KITCHEN APPLIANCES TO REDUCE RISK OF INFECTION THROUGH FOOD SERVICES/PROCESSING.					
		PLANS					3
		DESIGN					9
		CONSTRUCTION					50
		EQUIPMENT					75
		TOTAL FUNDING	HTH		C		137C
5.07.	HHSC50	SAMUEL MAHELONA MEMORIAL HOSPITAL, RENOVATE BATHROOMS IN LONG-TERM CARE, KAUAI					
		DESIGN AND CONSTRUCTION TO REMODEL AND UPDATE THE BATHROOMS IN THE LONG TERM CARE AREA. PROJECT TO INCLUDE TOTAL UPGRADE OF TILE FLOORS, WALLS, PLUMBING, ETC.					
		DESIGN					23
		CONSTRUCTION					315
		TOTAL FUNDING	HTH		C		338C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
5.08.		HALE HOOLA HAMAKUA, EXPANSION OF FACILITY, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE EXISTING BED CAPACITY.					
		PLANS				380	
		DESIGN				600	
		CONSTRUCTION				7,700	
		EQUIPMENT				419	
		TOTAL FUNDING	HTH		C	9,099C	
5.09.		MAUI MEMORIAL MEDICAL CENTER, EXPANSION OF EMERGENCY AND URGENT CARE FACILITY, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SIX BED URGENT CARE CENTER ADJACENT TO THE EXISTING EMERGENCY DEPARTMENT AND RENOVATION OF THE URGENT CARE CLINIC AND EMERGENCY DEPARTMENT ENTRY AREA.					
		DESIGN				1	
		CONSTRUCTION				4,152	
		EQUIPMENT				1	
		TOTAL FUNDING	HTH		C	4,154C	

F. SOCIAL SERVICES

HMS501 - YOUTH SERVICES ADMINISTRATION

1. P30017 HALE KIPA, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF THE HALE KIPA COMPREHENSIVE PROGRAM SUPPORT CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS		50	50
LAND		200	200
DESIGN		200	200
CONSTRUCTION		200	200
TOTAL FUNDING	HMS	650C	650C

DEF112 - SERVICES TO VETERANS

2. OVS004 AIEA BAY PUMPHOUSE PROPERTY ENVIRONMENTAL REMEDIATION, OAHU

DESIGN FOR REMEDIATION ACTIONS FOR ENVIRONMENTAL CLEANUP. SITE ASSESSMENT WILL INCLUDE A PRIORITY FOCUS ON THE MERCURY CONTAMINATION ISSUE. MAY ALSO INCLUDE MISCELLANEOUS WORK RELATING TO SITE CLEANUP, SECURITY OF PROPERTY, AND VARIOUS CLOSE OUT ACTIONS REQUIRED BY OTHER STATE AND FEDERAL GOVERNMENT AGENCIES.

DESIGN		150	
TOTAL FUNDING	DEF	150C	C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
2.01.		WEST HAWAII VETERANS CEMETERY IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WEST HAWAII VETERANS CEMETERY, HAWAII.					
		DESIGN					25
		CONSTRUCTION					275
		TOTAL FUNDING	DEF		C		300C
HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH							
3.	P30018	PALOLO CHINESE HOME, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT THE PALOLO CHINESE HOME'S FOOD SERVICE COMPLEX, WELLNESS CENTER, AND SUPPORTING INFRASTRUCTURE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			1		1
		CONSTRUCTION		498		498	
		EQUIPMENT		1		1	
		TOTAL FUNDING	HMS	500C		500C	
HMS220 - RENTAL HOUSING SERVICES							
3.01.	RH006	LARGE CAPACITY CESSPOOL CONVERSIONS FOR FEDERAL AND STATE PROJECTS, HAWAII					
		DESIGN AND CONSTRUCTION TO CLOSE AND UPGRADE A TOTAL OF 39 LARGE CAPACITY CESSPOOLS ON THE ISLAND OF HAWAII.					
		DESIGN					300
		CONSTRUCTION					1,700
		TOTAL FUNDING	HMS		C		2,000C
3.02.		LAIOLA GENERATOR, HEAT PUMP, AND LIGHTING, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION, REPAIR, AND UPGRADE OF THE GENERATOR, HEAT PUMP, AND LIGHTING.					
		DESIGN					5
		CONSTRUCTION					65
		TOTAL FUNDING	HMS		C		70C
3.03.		WAIKAHA HAZARDOUS MATERIALS ABATEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE ABATEMENT OF HAZARDOUS MATERIALS.					
		DESIGN					10
		CONSTRUCTION					90
		TOTAL FUNDING	HMS		C		100C
3.04.		HAUICI HOMES HAZARDOUS MATERIALS ABATEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE ABATEMENT OF HAZARDOUS MATERIALS.					
		DESIGN					100
		CONSTRUCTION					900

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		TOTAL FUNDING	HMS		C	1,000C	
3.05.		ULUWEHI APARTMENTS DEMOLITION, OAHU					
		DESIGN AND CONSTRUCTION FOR DEMOLITION.					
		DESIGN				50	
		CONSTRUCTION				250	
		TOTAL FUNDING	HMS		C	300C	
3.06.		ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE					
		CONSTRUCTION TO UPGRADE STATE OWNED HOUSING PROJECTS TO MEET COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA).					
		CONSTRUCTION				250	
		TOTAL FUNDING	HMS		C	250C	
3.07.		PHYSICAL NEEDS ASSESSMENT, STATEWIDE					
		PLANS FOR A PHYSICAL NEEDS ASSESSMENT FOR STATE OWNED HOUSING PROJECTS.					
		PLANS				280	
		TOTAL FUNDING	HMS		C	280C	

HMS229 - HCDCH ADMINISTRATION

3.08.	RH005	REROOF AND SPALL REPAIR AT POHULANI ELDERLY HOUSING, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REROOFING AND SPALL REPAIR AT POHULANI ELDERLY HOUSING.					
		DESIGN				60	
		CONSTRUCTION				600	
		TOTAL FUNDING	HMS		C	660C	

HHL602 - PLANNING, DEVELOPMENT, MANAGEMENT, AND GENERAL SUPPORT FOR HAWAIIAN HOMESTEADS

4.	P30019	WAIMANALO HAWAIIAN HOMES ASSOCIATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW HALAU BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				598	
		TOTAL FUNDING	HHL			600C	C

HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES

4.01.		YWCA OF OAHU, OAHU					
		CONSTRUCTION FOR RENOVATIONS TO THE FERNHURST TRANSITIONAL RESIDENCE FOR WOMEN AND CHILDREN IN MAKIKI. THIS PROJECT QUALIFIES FOR A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION				600	
		TOTAL FUNDING	HMS		C	600C	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
G. FORMAL EDUCATION							
EDN100 - SCHOOL-BASED BUDGETING							
1.	101	LUMP SUM CIP - RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES AND/OR TRAILER PORTABLES WHILE SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION/REPAIR; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200		200	
		CONSTRUCTION		3,600		3,600	
		EQUIPMENT		200		200	
		TOTAL FUNDING	AGS	4,000 B		4,000 B	
2.	002	LUMP SUM CIP - MINOR RENOVATIONS TO BUILDINGS AND SCHOOL SITES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		150		150	
		CONSTRUCTION		1,700		1,700	
		EQUIPMENT		150		150	
		TOTAL FUNDING	AGS	2,000 B		2,000 B	
3.	003	LUMP SUM CIP - MASTER PLANS, SITE STUDIES, AND MINOR LAND ACQUISITIONS, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.					
		PLANS		245		245	
		LAND		5		5	
		TOTAL FUNDING	AGS	250 B		250 B	
4.	004	LUMP SUM CIP - RENOVATIONS FOR NOISE AND HEAT ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE, VENTILATION, AND/OR HIGH TEMPERATURE PROBLEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		200		200	
		CONSTRUCTION		800		800	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		TOTAL FUNDING	AGS	1,000 B		1,000 B	
5.	005	LUMP SUM CIP - FIRE PROTECTION, CODE VIOLATIONS, AND ALARM SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS TO MEET COUNTY FIRE PROTECTION STANDARDS AND/OR FIRE CODE VIOLATIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100		100	
		CONSTRUCTION		400		400	
		TOTAL FUNDING	AGS	500 B		500 B	
6.	006	LUMP SUM CIP - ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO PHYSICALLY CHALLENGED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		300		300	
		CONSTRUCTION		1,700		1,700	
		TOTAL FUNDING	AGS	2,000 B		2,000 B	
7.	007071	LUMP SUM CIP - PUBLIC ACCOMMODATIONS TRANSITION PLANS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISIONS OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		250		250	
		CONSTRUCTION		500		500	
		TOTAL FUNDING	AGS	750 B		750 B	
8.	007	LUMP SUM CIP - SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100		100	
		CONSTRUCTION		300		300	
		EQUIPMENT		100		100	
		TOTAL FUNDING	AGS	500 B		500 B	
9.	008	LUMP SUM CIP - ASBESTOS REMOVAL AND/OR LEAD PAINT REMOVAL IN SCHOOL BUILDINGS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTION, IMPROVEMENT, AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS, STATEWIDE.					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD PAINT.							
		DESIGN			50		100
		CONSTRUCTION			450		900
		TOTAL FUNDING	AGS		500 B		1,000 B
10.	009	LUMP SUM CIP - REQUIREMENTS FOR HEALTH AND SAFETY/LAWS AND ORDINANCES, STATEWIDE					
DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES AND/OR COUNTY REQUIREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.							
		DESIGN			100		100
		CONSTRUCTION			400		400
		TOTAL FUNDING	AGS		500 B		500 B
11.	010	LUMP SUM CIP - PROJECT ADJUSTMENT FUND, STATEWIDE					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.							
		DESIGN			200		200
		CONSTRUCTION			700		700
		EQUIPMENT			100		100
		TOTAL FUNDING	AGS		1,000 B		1,000 B
12.	011	LUMP SUM CIP - TELECOMMUNICATIONS AND POWER INFRASTRUCTURE, STATEWIDE					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.							
		DESIGN			250		250
		CONSTRUCTION			1,700		1,700
		EQUIPMENT			50		50
		TOTAL FUNDING	AGS		2,000 B		2,000 B
13.	014	LUMP SUM CIP - CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE					
PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CIP RELATED POSITIONS.							
		PLANS			250		350
		TOTAL FUNDING	EDN		250 B		350 B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
14.	060	LUMP SUM CIP - STATE/DISTRICT RELOCATING AND IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		25		25	
		CONSTRUCTION		50		50	
		EQUIPMENT		25		25	
		TOTAL FUNDING	AGS	100B		100B	
15.	014050	LUMP SUM CIP - ELECTRICAL UPGRADES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES AT SCHOOLS, STATEWIDE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		400		400	
		CONSTRUCTION		1,100		1,100	
		TOTAL FUNDING	AGS	1,500B		1,500B	
16.	P00026	LUMP SUM CIP - PLAYGROUND EQUIPMENT, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET U.S. CONSUMER PRODUCTS SAFETY COMMISSION SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100		100	
		CONSTRUCTION		500		500	
		EQUIPMENT		150		150	
		TOTAL FUNDING	AGS	750B		750B	
17.	009002	LUMP SUM CIP - PLAYGROUND EQUIPMENT ACCESSIBILITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		40		40	
		CONSTRUCTION		260		260	
		EQUIPMENT		200		200	
		TOTAL FUNDING	AGS	500B		500B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
18.	018	LUMP SUM CIP - ELIMINATION OF CESSPOOLS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE ELIMINATION OF CESSPOOLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		250		700	
		CONSTRUCTION		950		2,800	
		TOTAL FUNDING	AGS	1,200B		3,500B	
19.	019	LUMP SUM CIP - GENDER EQUITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		300		300	
		CONSTRUCTION		1,500		1,500	
		EQUIPMENT		200		200	
		TOTAL FUNDING	AGS	2,000B		2,000B	
19.01.		LUMP SUM CIP - SCHOOL BUILDING IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING, AIR CONDITIONING, PAINTING, PLUMBING, AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.					
		DESIGN				17,000	
		CONSTRUCTION				83,000	
		TOTAL FUNDING	EDN		B	100,000B	
19.02.		AIEA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				30	
		CONSTRUCTION				270	
		TOTAL FUNDING	AGS		B	300B	
19.03.		AIEA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PORTABLE CLASSROOM BUILDINGS TO PROVIDE APPROPRIATE LEARNING FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				40	
		CONSTRUCTION				230	
		TOTAL FUNDING	AGS		B	270B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
19.04.		ALA WAI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDING G; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					100
		TOTAL FUNDING	AGS		B		150B
19.05.		ALA WAI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RESURFACE THE HIHIWAI STREET PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					25
		CONSTRUCTION					75
		TOTAL FUNDING	AGS		B		100B
19.06.		AUGUST AHRENS ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					10
		CONSTRUCTION					90
		TOTAL FUNDING	AGS		B		100B
19.07.		BALDWIN HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					489
		EQUIPMENT					1
		TOTAL FUNDING	AGS		B		491B
19.08.		BALDWIN HIGH SCHOOL, MAUI					
		DESIGN AND CONSTRUCTION FOR A GIRLS ATHLETIC LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					200
		CONSTRUCTION					1,800
		TOTAL FUNDING	AGS		B		2,000B
20.	P30020	CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT AND UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	AGS		1,150B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
20.01.		CASTLE HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO EXPAND THE CAFETERIA DINING ROOM FOR ADDITIONAL STUDENT DINING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				300	
		CONSTRUCTION				2,600	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS		B	3,000B	
20.02.		DOLE MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDINGS D AND E; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				200	
		TOTAL FUNDING	AGS		B	250B	
20.03.		EWA BEACH ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SIX CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				360	
		CONSTRUCTION				4,500	
		EQUIPMENT				40	
		TOTAL FUNDING	AGS		B	4,900B	
20.04.		FARRINGTON HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				10	
		CONSTRUCTION				90	
		TOTAL FUNDING	AGS		B	100B	
21.	P30021	FERN ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE THE ROOFS OF BUILDINGS J, B, AND C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			35		
		CONSTRUCTION			200		
		TOTAL FUNDING	AGS		235B		B
22.	402051	HANA HIGH AND ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A SIX-CLASSROOM BUILDING AT HANA HIGH AND ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			2,900	2,000	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	3,000B		2,000B	
23.	P30022	HEEIA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		30			
		CONSTRUCTION		150			
		TOTAL FUNDING	AGS	180B			B
24.	P10030	HIGHLANDS INTERMEDIATE SCHOOL, OAHU					
		CONSTRUCTION FOR THE EXTENSION OF THE MUSIC BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		704			
		TOTAL FUNDING	AGS	704B			B
24.01.		HILO HIGH SCHOOL, HAWAII					
		PLANS AND DESIGN FOR A GYMNASIUM TO INCLUDE CLASSROOMS; DEMOLITION OF EXISTING STRUCTURE AND PORTABLE; REMOVAL OF ASBESTOS AND LEAD PAINT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				1,000	
		DESIGN				1,000	
		TOTAL FUNDING	AGS		B	2,000B	
24.02.		HONOKAA HIGH AND INTERMEDIATE SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR NEW BATHROOM FACILITIES BETWEEN BUILDINGS C AND A; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				35	
		CONSTRUCTION				300	
		TOTAL FUNDING	AGS		B	335B	
25.	P30024	HONOWAI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AIR CONDITIONING FOR THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		25			
		CONSTRUCTION		50			
		EQUIPMENT		125			
		TOTAL FUNDING	AGS	200B			B
25.01.		HONOWAI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL BEHIND BUILDING G; GROUND AND SITE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				250	
		TOTAL FUNDING	AGS		B	300B	
25.02.		ILIMA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING E; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				60	
		CONSTRUCTION				300	
		TOTAL FUNDING	AGS		B	360B	
25.03.		ILIMA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				500	
		TOTAL FUNDING	AGS		B	550B	
25.04.		KAAAWA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY; RENOVATE TEMPORARY LIBRARY TO GENERAL CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				300	
		CONSTRUCTION				2,350	
		EQUIPMENT				100	
		TOTAL FUNDING	AGS		B	2,750B	
25.05.		KAAHUMANU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A TEACHERS' PARKING LOT ALONG PIIKOI STREET WITH FENCE ENCLOSURES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				35	
		CONSTRUCTION				215	
		TOTAL FUNDING	AGS		B	250B	
26.	P30025	KAHUKU HIGH AND INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			350		
		EQUIPMENT			25		
		TOTAL FUNDING	AGS		400 B		B

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
26.01.		KAHUKU HIGH SCHOOL, OAHU					
		DESIGN FOR A NEW ATHLETIC FIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					400
		TOTAL FUNDING	AGS		B		400B
27.	P30026	KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A SCIENCE CENTER IN BUILDING G; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			105		
		TOTAL FUNDING	AGS		130 B		B
28.	P30027	KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ATHLETIC FIELD RESTROOM FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			33		
		CONSTRUCTION			300		
		TOTAL FUNDING	AGS		333 B		B
28.01.		KALANI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE AIR CONDITIONING OF THE ADMINISTRATION/ LIBRARY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					450
		TOTAL FUNDING	AGS		B		500B
28.02.		KALEIOPUU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AN EMERGENCY REAR EXIT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					35
		CONSTRUCTION					165
		TOTAL FUNDING	AGS		B		200B
29.	P30028	KALIHI-WAENA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDINGS A AND B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			260		
		TOTAL FUNDING	AGS		285 B		B

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
30.	P30029	KALIHI-WAENA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE AND IMPROVE BUILDING H FOR THE RELOCATION OF THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		300B		B
30.01.		KAPAA ELEMENTARY SCHOOL, KAUAI					
		DESIGN FOR A NEW LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					250
		TOTAL FUNDING	AGS		B		250B
31.	P30030	KAPALAMA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING STALLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			20		
		CONSTRUCTION			130		
		TOTAL FUNDING	AGS		150B		B
31.01.		KAPALAMA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RESURFACE THE BASKETBALL COURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					10
		CONSTRUCTION					65
		TOTAL FUNDING	AGS		B		75B
32.	P02036	KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL AND PLUMBING SYSTEMS IN THE AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		
		CONSTRUCTION			500		
		TOTAL FUNDING	AGS		600B		B
33.	P10035	KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION, IMPROVEMENT, AND/OR EXPANSION OF THE MUSIC BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			300		
		TOTAL FUNDING	AGS		350B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
33.01.		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					700
		TOTAL FUNDING	AGS		B		750B
33.02.	390551	KEALAKEHE INTERMEDIATE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW ADMINISTRATION/LIBRARY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					25
		CONSTRUCTION					5,875
		EQUIPMENT					100
		TOTAL FUNDING	AGS		B		6,000B
33.03.		KIHEI HIGH SCHOOL, MAUI					
		PLANS AND DESIGN FOR A NEW PUBLIC HIGH SCHOOL IN KIHEI, MAUI; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					500
		DESIGN					5,000
		TOTAL FUNDING	AGS		B		5,500B
34.	459B51	KILAUEA ELEMENTARY SCHOOL, KAUAI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			1		
		DESIGN		299			
		CONSTRUCTION					2,000
		EQUIPMENT					100
		TOTAL FUNDING	AGS	300B			2,100B
35.	P30034	LAHAINALUNA HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ATHLETIC LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION		1,998			
		EQUIPMENT			1		
		TOTAL FUNDING	AGS	2,000B			B
35.01.		LANAI HIGH AND ELEMENTARY SCHOOL, LANAI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN					50
		CONSTRUCTION					250
		TOTAL FUNDING	AGS		B		300B
35.02.		LEHUA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					600
		TOTAL FUNDING	AGS		B		700B
36.	P30035	LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CONVERSION OF ROOMS IN BUILDING H INTO A TECHNOLOGY CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			225		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		251 B		B
37.	214051	LEILEHUA HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			999		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,000 B		B
37.01.		LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE FOOTBALL FIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					350
		TOTAL FUNDING	AGS		B		400B
37.02.		LINAPUNI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDING A; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					25
		CONSTRUCTION					100
		TOTAL FUNDING	AGS		B		125B
37.03.		LINCOLN ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AIR CONDITIONING IN BUILDINGS A, B, D, E, F, AND G; GROUND AND					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					580
		EQUIPMENT					20
		TOTAL FUNDING	AGS		B		700B
37.04.		LUNALILO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDING H; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					25
		CONSTRUCTION					115
		TOTAL FUNDING	AGS		B		140B
38.	P30037	MANOA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		300B		B
39.	851100	MAUI LANI ELEMENTARY SCHOOL, MAUI					
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE FIRST AND SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		LAND			1		
		DESIGN			1,000		
		CONSTRUCTION			11,500		11,500
		EQUIPMENT			499		500
		TOTAL FUNDING	AGS		13,000B		12,000B
39.01.		MAUKA LANI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					600
		CONSTRUCTION					4,500
		EQUIPMENT					60
		TOTAL FUNDING	AGS		B		5,160B
40.	P30038	MCKINLEY HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			65		
		CONSTRUCTION			250		
		EQUIPMENT			5		
		TOTAL FUNDING	AGS		320B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
40.01.		MCKINLEY HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					450
		TOTAL FUNDING	AGS		B		500B
41.	216051	MILILANI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A TEN CLASSROOM BUILDING AT MILILANI HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			360		
		CONSTRUCTION				5,650	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS	360B		5,700B	
42.	P30039	MOANALUA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			750		
		TOTAL FUNDING	AGS	800B			B
42.01.		MOANALUA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO EXPAND THE EXISTING LIBRARY TO ACCOMMODATE A VIDEO/MEDIA PRODUCTION CENTER FOR STUDENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					250
		TOTAL FUNDING	AGS		B		300B
42.02.		MOANALUA HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION AND/OR RENOVATION OF EXISTING LOCKER ROOMS; INSTALLATION OF STUDENT BATHROOMS, WATER FOUNTAINS, AND SINKS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					40
		CONSTRUCTION					241
		TOTAL FUNDING	AGS		B		281B
42.03.		MOANALUA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN					54
		CONSTRUCTION					100
		TOTAL FUNDING	AGS		B		154B
43.	263151	NANAKULI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			300		
		CONSTRUCTION				5,700	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS	300B		5,750B	
43.01.		NANAKULI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ATHLETIC COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION				898	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		B	900B	
44.	823100	NANAKULI IV ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			100		
		EQUIPMENT			349		
		TOTAL FUNDING	AGS	450B			B
44.01.		NOELANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				250	
		TOTAL FUNDING	AGS		B	300B	
44.02.		NUUANU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDINGS B, E, D, AND I; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				44	
		CONSTRUCTION				100	
		TOTAL FUNDING	AGS		B	144B	

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
45.	293100	OCEAN POINTE ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR FIRST AND SECOND INCREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				24,300	
		EQUIPMENT				700	
		TOTAL FUNDING	AGS		B	25,000B	
46.	383151	PAHOA HIGH SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR A GYMNASIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		650			
		CONSTRUCTION				3,100	
		TOTAL FUNDING	AGS	650 B		3,100B	
47.	P30041	PEARL CITY ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING OF BUILDING C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		75			
		CONSTRUCTION		400			
		EQUIPMENT		25			
		TOTAL FUNDING	AGS	500 B			B
47.01.		PEARL CITY HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A WEIGHT TRAINING ROOM AND ATHLETIC TRAINING ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				1,449	
		TOTAL FUNDING	AGS		B	1,450B	
47.02.		PEARL CITY HIGHLANDS ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				85	
		CONSTRUCTION				500	
		TOTAL FUNDING	AGS		B	585B	
48.	P30042	PEARLRIDGE ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		1			
		DESIGN		150			
		CONSTRUCTION		799			
		TOTAL FUNDING	AGS	950 B			B

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
48.01.		RADFORD HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MULTI-PURPOSE CLASSROOM TO EXPAND THE FOOD SERVICE PROGRAM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					300
		EQUIPMENT					50
		TOTAL FUNDING	AGS		B		400B
48.02.		RED HILL ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL AIR CONDITIONING IN THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					15
		CONSTRUCTION					135
		TOTAL FUNDING	AGS		B		150B
49. P30043		ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AN AIR CONDITIONING SYSTEM FOR BUILDING A; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			450		
		TOTAL FUNDING	AGS		500B		B
50. 146A60		ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			2,498		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		2,500B		B
51. P30045		SALT LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE BUILDING E TO CREATE MORE CLASSROOMS AND RELATED IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			83		
		CONSTRUCTION			437		
		TOTAL FUNDING	AGS		520B		B
51.01.		SALT LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN					100
		CONSTRUCTION					650
		TOTAL FUNDING	AGS		B		750B
52.	P30046	SHAFTER ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING STALLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			15		
		CONSTRUCTION			75		
		TOTAL FUNDING	AGS		90B		B
52.01.		STEVENSON MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL AT AUWAIOLIMU STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					75
		CONSTRUCTION					425
		TOTAL FUNDING	AGS		B		500B
52.02.		SUNSET BEACH ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					250
		CONSTRUCTION					1,900
		EQUIPMENT					150
		TOTAL FUNDING	AGS		B		2,300B
52.03.		WAHIAWA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF ADMINISTRATION OFFICES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					149
		CONSTRUCTION					1
		TOTAL FUNDING	AGS		B		150B
53.	P30047	WAIAKEA HIGH SCHOOL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE TRACK, INCLUDING INSTALLATION OF AN ALL WEATHER TRACK AND FIELD IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			100		
		DESIGN			250		
		CONSTRUCTION			2,450		
		TOTAL FUNDING	AGS		2,800B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
53.01.		WAIANAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE WIDENING OF CAMPUS WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					81
		CONSTRUCTION					100
		TOTAL FUNDING	AGS		B		181B
54.	272051	WAIANAE HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		4,800			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	4,900B			B
54.01.		WAIANAE HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PERMANENT BLEACHERS ON THE VISITORS' SIDE OF THE FOOTBALL FIELD AND IMPROVEMENTS TO THE TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					900
		TOTAL FUNDING	AGS		B		1,000B
54.02.		WAIANAE HIGH SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS, IMPROVEMENTS, AND/OR REPLACEMENT OF THE CONCRETE BLEACHERS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					200
		DESIGN					599
		CONSTRUCTION					1
		TOTAL FUNDING	AGS		B		800B
54.03.		WAIANAE INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					500
		TOTAL FUNDING	AGS		B		600B
55.	P30048	WAIKELE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXTENSION OF THE PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			15		

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		CONSTRUCTION			110		
		TOTAL FUNDING	AGS		125 B		B
56.	P30049	WAIMEA HIGH SCHOOL, KAUAI					
		DESIGN AND CONSTRUCTION OF NEW LOCKER ROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			799		
		TOTAL FUNDING	AGS		800 B		B
57.	P30050	WAIMEA MIDDLE SCHOOL, HAWAII					
		PLANS AND DESIGN FOR THE FIRST AND SECOND INCREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			1,000		
		DESIGN			1,000		
		TOTAL FUNDING	AGS		2,000 B		B
57.01.		WAIPAHAU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				400	
		CONSTRUCTION				3,000	
		TOTAL FUNDING	AGS		B	3,400 B	
58.	277251	WAIPAHAU HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			4,750		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		4,850 B		B
59.	278451	WAIPAHAU INTERMEDIATE SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			3,199		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		3,200 B		B
60.	P30052	WASHINGTON MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE BELL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			20		
		CONSTRUCTION			150		
		TOTAL FUNDING	AGS		170 B		B

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
AGS807 - PHYSICAL PLANT OPERATIONS AND MAINTENANCE - AGS							
61. CSD03 LUMP SUM CIP - SCHOOL BUILDING IMPROVEMENTS, STATEWIDE							
DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING, AIR CONDITIONING, PAINTING, PLUMBING, AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.							
DESIGN				5,000			
CONSTRUCTION				30,000			
TOTAL FUNDING				AGS	35,000C		C
EDN407 - PUBLIC LIBRARIES							
62. 01-H&S HEALTH AND SAFETY, STATEWIDE							
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE, BUT NOT BE LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDING AND GROUNDS, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
PLANS				45		100	
DESIGN				150		800	
CONSTRUCTION				800		2,500	
EQUIPMENT				5		100	
TOTAL FUNDING				AGS	1,000C	3,500C	
63. P30053 KAPAA PUBLIC LIBRARY, KAUAI							
PLANS AND DESIGN FOR THE EXPANSION OF THE LIBRARY.							
PLANS				1			
DESIGN				49			
TOTAL FUNDING				AGS	50C		C
64. P30054 MANOA PUBLIC LIBRARY, OAHU							
PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE EXPANSION AND/OR REPLACEMENT OF THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.							
PLANS				1		100	
LAND				50			
DESIGN				49		500	
CONSTRUCTION				400		5,400	
TOTAL FUNDING				AGS	500C	6,000C	

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				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
64.01.		HANAPEPE PUBLIC LIBRARY, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE LIBRARY.					
		DESIGN					150
		CONSTRUCTION					1,500
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		1,651C
UOH100 - UNIVERSITY OF HAWAII, MANOA							
65.	693	UHM, USDA FRUIT FLY FACILITY IN WAIMANALO, OAHU					
		CONSTRUCTION FOR THE USDA FRUIT FLY FACILITY IN WAIMANALO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		10,000			
		TOTAL FUNDING	UOH	10,000N			N
66.	298	UHM, MAKAI ATHLETIC TRAINING ROOM, RENOVATION AND EXPANSION, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAKAI ATHLETIC TRAINING ROOM RENOVATION AND EXPANSION; EQUIPMENT AND APPURTENANCES.					
		DESIGN					10
		CONSTRUCTION		114			110
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	115C			120C
66.01.		UHM, KOMOHANA AGRICULTURAL COMPLEX, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE EXISTING SPACE TO CREATE LABORATORIES, LABORATORY SUPPORT SPACES, CONFERENCE ROOMS, CLASSROOMS, AND OFFICES; AND BUILD REPLACEMENT GREENHOUSES AND SUPPORT SPACES FOR GREENHOUSES FOR THE KOMOHANA AGRICULTURAL COMPLEX IN HILO.					
		DESIGN					3,070
		CONSTRUCTION					11,429
		EQUIPMENT					1
		TOTAL FUNDING	UOH		C		14,500C
66.02.		UHM, COOPERATIVE EXTENSION PROGRAMS, NEW OFFICE BUILDING, MOLOKAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW OFFICE BUILDING FOR THE COOPERATIVE EXTENSION SERVICES PROGRAMS ON MOLOKAI.					
		DESIGN					75
		CONSTRUCTION					960
		EQUIPMENT					65
		TOTAL FUNDING	UOH		C		1,100C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
UOH210 - UNIVERSITY OF HAWAII, HILO							
67.	448	UHH, STUDENT LIFE AND EVENTS COMPLEX, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE STUDENT LIFE AND EVENTS COMPLEX. PROJECT MAY INCLUDE PARKING FACILITIES AND THE RELOCATION OF PROGRAMS AFFECTED BY THIS PROJECT.					
		DESIGN		1,260			1
		CONSTRUCTION				14,998	
		EQUIPMENT					1
		TOTAL FUNDING	UOH	1,260C		15,000C	
68.	698	UHH, PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS FOR THE PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1		
		CONSTRUCTION		1,998			
		EQUIPMENT			1		
		TOTAL FUNDING	UOH	2,000C			C
68.01.		UHH, NORTH HAWAII RESEARCH AND EDUCATION CENTER, PHASE II, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS FOR THE NORTH HAWAII RESEARCH AND EDUCATION CENTER.					
		PLANS					1
		DESIGN				430	
		CONSTRUCTION				3,268	
		EQUIPMENT					1
		TOTAL FUNDING	UOH		C	3,700C	
68.02.		UHH, PHARMACY BUILDING, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PHARMACY BUILDING AT THE UNIVERSITY OF HAWAII AT HILO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					175
		DESIGN				1,666	
		CONSTRUCTION				15,071	
		EQUIPMENT				1,493	
		TOTAL FUNDING	UOH		N	18,405N	
UOH700 - UNIVERSITY OF HAWAII, WEST OAHU							
68.03.		UHWO, TEMPORARY FACILITIES, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TEMPORARY FACILITIES FOR THE UNIVERSITY OF					

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CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		HAWAII-WEST OAHU. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT COSTS.					
		DESIGN					45
		CONSTRUCTION					395
		EQUIPMENT					1
		TOTAL FUNDING	UOH		C		441C
UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES							
69.	B42	KAP, CANNON CLUB SITE DEVELOPMENT, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF THE CANNON CLUB SITE FOR THE CULINARY ARTS PROGRAM AT KAPIOLANI COMMUNITY COLLEGE.					
		PLANS		148			
		LAND		1			
		DESIGN		1			
		CONSTRUCTION				3,000	
		TOTAL FUNDING	UOH	150C		3,000C	
70.	L27	LEE, FOOD SERVICES PROGRAM, PHASE II, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE DINING ROOM FOR THE CULINARY ARTS PROGRAM.					
		DESIGN		150		1	
		CONSTRUCTION				1,421	
		EQUIPMENT				250	
		TOTAL FUNDING	UOH	150C		1,672C	
70.01.		MAU, STUDENT SERVICES BUILDING RENOVATION, MAUI					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE STUDENT SERVICES BUILDING.					
		DESIGN				1	
		CONSTRUCTION				3,499	
		TOTAL FUNDING	UOH		C	3,500C	
70.02.		MAU, SCIENCE BUILDING, MAUI					
		PLANS FOR A NEW SCIENCE BUILDING AT MAUI COMMUNITY COLLEGE.					
		PLANS				300	
		TOTAL FUNDING	UOH		C	300C	
70.03.		KAU, ONE STOP CENTER BUILDING, PHASE I, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PHASE I OF THE ONE STOP CENTER BUILDING AT KAUAI COMMUNITY COLLEGE.					
		DESIGN				1	
		CONSTRUCTION				9,998	
		EQUIPMENT				1	
		TOTAL FUNDING	UOH		C	10,000C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
70.04.		KAU, AIR CONDITIONING PLANT RENOVATION, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE AIR CONDITIONING PLANT AT KAUAI COMMUNITY COLLEGE.					
		DESIGN					25
		CONSTRUCTION					325
		TOTAL FUNDING	UOH		C		350C
70.05.		KAU, SECOND ACCESS ROAD, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE EXTENSION OF THE EXISTING ACCESS ROAD TO CONNECT WITH KAUMUALII HIGHWAY AT THE INTERSECTION WITH NUHOU STREET.					
		DESIGN					70
		CONSTRUCTION					630
		TOTAL FUNDING	UOH		C		500C
			UOH		R		200R
UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT							
71. 521		SYS, INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN AND CONSTRUCTION FOR INFRASTRUCTURE AND RELATED IMPROVEMENTS AT UNIVERSITY CAMPUSES, SYSTEMWIDE.					
		PLANS					106
		DESIGN		420			121
		CONSTRUCTION		7,417			1,212
		TOTAL FUNDING	UOH	7,837C			1,439C
72. 536		SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.					
		DESIGN		51			1
		CONSTRUCTION		3,266			379
		TOTAL FUNDING	UOH	3,317C			380C
73. 537		SYS, FIRE SAFETY CODE COMPLIANCE, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRE SAFETY SYSTEMS. PROJECT MAY INCLUDE FIRE ALARM SYSTEMS, FIRE DETECTION SYSTEMS, FIRE SPRINKLER SYSTEMS, CENTRAL FIRE ALARM SYSTEMS, AND ALL OTHER FIRE SAFETY IMPROVEMENTS, SYSTEMWIDE.					
		DESIGN		626			88
		CONSTRUCTION		2,349			2,470
		EQUIPMENT					1
		TOTAL FUNDING	UOH	2,975C			2,559C
74. 541		SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CAPITAL RENEWAL AND DEFERRED MAINTENANCE PROJECTS AT THE UNIVERSITY OF					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		HAWAII. PROJECT TO INCLUDE REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.					
		PLANS			50		400
		DESIGN			400		3,600
		CONSTRUCTION			4,545		25,995
		EQUIPMENT			5		5
		TOTAL FUNDING	UOH		5,000 C		30,000 C

H. CULTURE AND RECREATION

LNR806 - PARKS ADMINISTRATION AND OPERATION

1. F07 LUMP SUM CIP, STATE PARK FACILITY IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE REMOVAL OF CESSPOOLS AND IMPROVEMENTS AND RENOVATIONS TO PARK FACILITIES TO INCLUDE SEWAGE DISPOSAL SYSTEMS, UPGRADE OF FACILITIES, AND OTHER RELATED IMPROVEMENTS.

DESIGN		50		10
CONSTRUCTION		450		9,490
TOTAL FUNDING	LNR	500C		9,500C

1.01. H10 LUMP SUM CIP, STATE PARKS COMFORT STATIONS IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF OUTDATED COMFORT STATIONS AND RECONSTRUCTION OF COMFORT STATIONS BY UPGRADING THEM TO CURRENT STANDARDS.

DESIGN				500
CONSTRUCTION				4,500
TOTAL FUNDING	LNR		C	5,000C

1.02. KEOLANAHIHI STATE PARK, HAWAII

LAND ACQUISITION TO EXPAND THE KEOLANAHIHI STATE HISTORICAL PARK.

LAND				600
TOTAL FUNDING	LNR		C	600C

LNR801 - OCEAN-BASED RECREATION

2. 299B IMPROVEMENTS TO HARBOR FACILITIES, STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION OF REPAIRS/ IMPROVEMENTS AT VARIOUS BOATING FACILITIES THROUGHOUT THE STATE TO INCLUDE DREDGING, PAVING, UTILITIES, AND OTHER BERTHING AND SHORE FACILITIES INCLUDING BOAT RAMPS.

PLANS		10		10
DESIGN		20		20

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		CONSTRUCTION		120		120	
		TOTAL FUNDING	LNR	150D		150D	
3.	299C	IMPROVEMENTS TO BOAT RAMP FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO VARIOUS BOAT RAMP FACILITIES STATEWIDE, INCLUDING DREDGING, PAVING, UTILITIES, LOADING DOCKS, COMFORT STATIONS, AND OTHER FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		50		50	
		DESIGN		50		50	
		CONSTRUCTION		400		400	
		TOTAL FUNDING	LNR	125C		125C	
			LNR	375N		375N	
4.	310K	COMFORT STATION/SEWER IMPROVEMENTS TO BOATING FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF NEW COMFORT STATIONS AND REPLACEMENT OF EXISTING DETERIORATED COMFORT STATIONS THROUGHOUT THE STATE, INCLUDING SITE PREPARATION, SEWER IMPROVEMENTS, UTILITIES, AND PARKING FACILITIES.					
		PLANS		25		25	
		DESIGN		25		25	
		CONSTRUCTION		450		450	
		TOTAL FUNDING	LNR	500D		500D	
5.	320A	KEEHI BOAT HARBOR, REPLACEMENT OF PIERS 100 AND 200, OAHU					
		PLANS AND DESIGN FOR THE REPLACEMENT OF DETERIORATED PIERS 100 AND 200.					
		PLANS		95			
		DESIGN		190			
		TOTAL FUNDING	LNR	285D			D
6.	340F	HALEIWA BOAT HARBOR IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE REPAIR OF DETERIORATED FACILITIES AND NEEDED IMPROVEMENTS.					
		PLANS		65			
		DESIGN		135			
		CONSTRUCTION		265			
		TOTAL FUNDING	LNR	465D			D
6.01.	246B	LAHAINA BOAT HARBOR COMFORT STATION REPLACEMENT, MAUI					
		CONSTRUCTION FOR THE REPLACEMENT OF THE DETERIORATED COMFORT STATION AT LAHAINA BOAT HARBOR.					
		CONSTRUCTION				900	
		TOTAL FUNDING	LNR		C	500C	
			LNR		N	400N	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
6.02.	299E	DBOR - IMPROVEMENTS TO HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF REPAIRS/IMPROVEMENTS AT VARIOUS EXISTING BOATING FACILITIES THROUGHOUT THE STATE INCLUDING DREDGING, PAVING, UTILITIES, AND OTHER BERTHING AND SHORE FACILITIES INCLUDING BOAT RAMPS.					
		PLANS				250	
		DESIGN				500	
		CONSTRUCTION				8,250	
		TOTAL FUNDING	LNR		E	9,000E	
6.03.		HANA RAMP AND WHARF, MAUI					
		DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS FOR THE HANA RAMP AND WHARF.					
		DESIGN				150	
		CONSTRUCTION				1,200	
		TOTAL FUNDING	LNR		C	350C	
			LNR		E	1,000E	
6.04.		MAALAEA SMALL BOAT HARBOR, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE REPAIR AND IMPROVEMENT OF THE PIERS AND ELECTRICAL SYSTEM AND THE INSTALLATION OF A PUMP-OUT FACILITY.					
		PLANS				35	
		DESIGN				35	
		CONSTRUCTION				700	
		TOTAL FUNDING	LNR		C	770C	
6.05.		WAIANAE SMALL BOAT HARBOR, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO THE CONCRETE PIERS AND FINGER PIERS.					
		PLANS				20	
		DESIGN				30	
		CONSTRUCTION				450	
		TOTAL FUNDING	LNR		C	500C	

AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM

7. SA0004 ALOHA STADIUM, PROCURE AIR BEARINGS FOR MOVABLE STANDS AND PEDESTRIAN BRIDGES, OAHU

EQUIPMENT FOR PROCURING NEW AIR BEARINGS FOR THREE OF THE MOVABLE STANDS AND EACH OF THE FOUR PEDESTRIAN BRIDGE SYSTEMS OF THE ALOHA STADIUM.

EQUIPMENT		650	
TOTAL FUNDING	AGS	650B	B

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
8.	SA0006	ALOHA STADIUM, FIELD TURF REPLACEMENT, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO INSTALL FIELD TURF AND ASSOCIATED SUPPORT COMPONENTS.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION		297			
		EQUIPMENT			1		
		TOTAL FUNDING	AGS	300	C		
9.	SA0005	PLANS FOR A NEW STADIUM, OAHU					
		PLANS FOR ADVANCED PLANNING INCLUDING BUT NOT LIMITED TO FUNCTIONAL NEEDS ASSESSMENT, AND AS APPLICABLE RESULTANT SITE SELECTION AND ASSOCIATED ENVIRONMENTAL PLANNING.					
		PLANS					300
		TOTAL FUNDING	AGS		C		300C
9.01.	SA2004001	ALOHA STADIUM, REPLACE TELEPHONE SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE DETERIORATED COMMUNICATION HARDWARE AND CABLING, AND INSTALL A TELEPHONE SYSTEM THAT WILL SATISFY THE OPERATIONAL NEEDS OF THE ENTIRE STADIUM.					
		DESIGN					50
		CONSTRUCTION					200
		TOTAL FUNDING	AGS		C		250C
9.02.		ALOHA STADIUM, REPLACE TICKETING SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE TICKETING SYSTEM SOFTWARE AND HARDWARE.					
		DESIGN					10
		CONSTRUCTION					240
		TOTAL FUNDING	AGS		C		250C
9.03.		ALOHA STADIUM, INSTALL NETWORK CABLING AND UPGRADE INFORMATION TECHNOLOGY SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL NETWORK CABLING AND APPROPRIATE TRANSMISSION HARDWARE TO LINK THE TICKETING, SCOREBOARD, MAINTENANCE, GENERAL SERVICES, AND SECURITY OPERATIONS LOCATED AT THE NORTH END OF THE STADIUM, WITH THE PRIMARY NETWORK SYSTEM LOCATED AT THE ADMINISTRATIVE OFFICES ON THE SOUTH END OF THE STADIUM; AND REPLACE OBSOLETE AND FAILING COMPUTER AND INFORMATION TECHNOLOGY (IT) HARDWARE AND SOFTWARE SYSTEMS.					
		DESIGN					15
		CONSTRUCTION					260
		TOTAL FUNDING	AGS		C		275C

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CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
I. PUBLIC SAFETY							
PSD402 - HALAWA CORRECTIONAL FACILITY							
0.01.	20021	HALAWA CORRECTIONAL FACILITY, LIFE SAFETY CODE IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR FIRE AND LIFE SAFETY CODE IMPROVEMENTS THROUGHOUT THE HALAWA CORRECTIONAL FACILITY.					
		DESIGN				125	
		CONSTRUCTION				5,835	
		TOTAL FUNDING	AGS		C	5,960C	
PSD403 - KULANI CORRECTIONAL FACILITY							
1.	20025	KULANI CORRECTIONAL FACILITY, NEW SEWER SYSTEM, HAWAII					
		CONSTRUCTION FOR A NEW SEWER SYSTEM AT KULANI CORRECTIONAL FACILITY TO REPLACE EXISTING SYSTEM.					
		CONSTRUCTION		5,300			
		TOTAL FUNDING	AGS	5,300C			C
PSD404 - WAIAWA CORRECTIONAL FACILITY							
1.01.	20041	WAIAWA CORRECTIONAL FACILITY, WASTEWATER SYSTEM IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF IMPROVEMENTS TO THE WASTEWATER SYSTEM TO REMEDY DEFICIENCIES.					
		PLANS				35	
		DESIGN				55	
		CONSTRUCTION				585	
		TOTAL FUNDING	AGS		C	675C	
1.02.	20042	WAIAWA CORRECTIONAL FACILITY, IMPROVEMENTS TO FACILITY POWER SYSTEM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION OF IMPROVEMENTS TO FACILITY POWER SYSTEM TO ADDRESS CHRONIC OUTAGES AND INCREASE SERVICE LOAD OF SECONDARY POWER SYSTEM.					
		PLANS				15	
		DESIGN				25	
		CONSTRUCTION				210	
		TOTAL FUNDING	AGS		C	250C	
PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER							
1.03.	20011	MAUI COMMUNITY CORRECTIONAL CENTER, NEW BED EXPANSION AND RENOVATIONS, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE MAUI COMMUNITY CORRECTIONAL CENTER AND/OR ANY SATELLITE ADJUNCTS. THIS PROJECT IS					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				18,400	
		EQUIPMENT				335	
		TOTAL FUNDING	AGS		C	18,735C	

PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER

1.04. 20043 OAHU COMMUNITY CORRECTIONAL CENTER, NEW REPLACEMENT FACILITY, OAHU

PLANS AND LAND ACQUISITION FOR A NEW REPLACEMENT FACILITY FOR THE OAHU COMMUNITY CORRECTIONAL CENTER.

PLANS				1,375
LAND				125
TOTAL FUNDING	AGS		C	1,500C

PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER

1.05. 20044 KAUAI COMMUNITY CORRECTIONAL CENTER, NEW REPLACEMENT FACILITY, KAUAI

PLANS AND LAND ACQUISITION FOR A NEW REPLACEMENT FACILITY FOR THE KAUAI COMMUNITY CORRECTIONAL CENTER.

PLANS				350
LAND				125
TOTAL FUNDING	AGS		C	475C

PSD900 - GENERAL ADMINISTRATION

1.06. P20025 PROGRAM PLANNING AND CORRECTIONAL TREATMENT FACILITIES, STATEWIDE

PLANS FOR SYSTEMWIDE PROGRAM PLANNING AND DEVELOPMENT OF A NEW CORRECTIONAL TREATMENT FACILITY, STATEWIDE.

PLANS				1,000
TOTAL FUNDING	AGS		C	1,000C

1.07. MAUI ECONOMIC OPPORTUNITY, INMATE TRANSITIONAL HOUSING FACILITY, MAUI

LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR AN INMATE TRANSITIONAL HOUSING FACILITY IN WAILUKU, MAUI

LAND				700
DESIGN				1
CONSTRUCTION				299
TOTAL FUNDING	PSD		C	1,000C

LNR810 - PREVENTION OF NATURAL DISASTERS

1.08. HALEIWA AND WAIALUA FLOOD MITIGATION, OAHU

PLANS TO STUDY VARIOUS OPTIONS PRIOR TO THE COMMENCEMENT OF THE ARMY CORPS OF

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CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		ENGINEERS' PLANNED HELEMANO-PAUKAUILA-KAUKONAHUA WATERSHED MANAGEMENT PROJECT.					
		PLANS					100
		TOTAL FUNDING	LNR		C		100C
1.09.		LAKE WILSON, FLOOD MITIGATION, OAHU					
		PLANS TO CONDUCT A STUDY OF FLOODING PROBLEMS CAUSED BY PEAK FLOWS FROM STORMS INTO LAKE WILSON; AN EXAMINATION OF APPROPRIATE DRAINAGE ALTERNATIVES; AND MITIGATION MEASURES TO LESSEN THE IMPACT OF URBANIZATION OF DOWNSTREAM WATERWAYS AND RELATED FLOOD PROBLEMS.					
		PLANS					300
		TOTAL FUNDING	LNR		C		300C
1.10.		WINDWARD FLOOD ABATEMENT, OAHU					
		PLANS FOR STUDIES TO ADDRESS FLOOD CONDITIONS IN THE KOOLAULOA REGION FROM WAIHAOLE TO KAHUKU INCLUDING AN ASSESSMENT OF THE NATURE AND EXTENT OF FLOODING WITHIN THE REGION AND TO MAKE RECOMMENDATIONS FOR FLOOD ABATEMENT AND FLOOD CONTROL.					
		PLANS					300
		TOTAL FUNDING	LNR		C		300C

DEF110 - AMELIORATION OF PHYSICAL DISASTERS

2. C13 DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN,
CONSTRUCTION, AND EQUIPMENT FOR THE
INCREMENTAL ADDITION, REPLACEMENT, AND
UPGRADE OF STATE CIVIL DEFENSE WARNING
AND COMMUNICATIONS EQUIPMENT. THIS WILL
EXPAND THE COVERAGE AND RELIABILITY OF
THE WARNING AND CONTROL SYSTEM, AS WELL
AS MODERNIZE AND ALLEVIATE SIREN
COVERAGE GAP AREAS. THIS PROJECT IS DEEMED
NECESSARY TO QUALIFY FOR FEDERAL AID
FINANCING AND/OR REIMBURSEMENT.

PLANS		1	1
LAND		1	1
DESIGN		85	85
CONSTRUCTION		1,003	1,003
EQUIPMENT		177	177
TOTAL FUNDING	AGS	1,167C	1,167C
	AGS	100N	100N

**2.01. C14 STATE EMERGENCY OPERATIONS CENTER (EOC) REPLACEMENT
FACILITY, PHASE I, OAHU**

PLANS, LAND ACQUISITION, DESIGN,
CONSTRUCTION, AND EQUIPMENT FOR A NEW
EOC TO IMPROVE STATEWIDE EMERGENCY
COMMUNICATIONS, DIRECTION, CONTROL, AND

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		COORDINATION OF STATE AND COUNTY RESOURCES DURING EMERGENCIES AND DISASTERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1
		LAND					1
		DESIGN				1,496	
		CONSTRUCTION					1
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C	375	C
			AGS		N	1,125	N
2.02.		LAKE WILSON, LOCAL FLOOD WARNING SYSTEM, OAHU					
		DESIGN AND CONSTRUCTION FOR STREAM GAUGES FOR A FLOOD WARNING SYSTEM FOR LAKE WILSON.					
		DESIGN					25
		CONSTRUCTION				125	
		TOTAL FUNDING	DEF		C	75	C
			DEF		N	75	N

K. GOVERNMENT-WIDE SUPPORT

GOV100 - OFFICE OF THE GOVERNOR

1. G01 PROJECT ADJUSTMENT FUND, STATEWIDE

PLANS FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.

PLANS			1		1
TOTAL FUNDING	GOV		1	C	1

BUF101 - PROGRAM PLANNING, ANALYSIS, AND BUDGETING

2. 00-01 HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14 SPSLH 1995.

CONSTRUCTION			30,000		30,000
TOTAL FUNDING	BUF		30,000	C	30,000

3. 00-02 STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.

CONSTRUCTION			108,166		263,736
TOTAL FUNDING	BUF		108,166	C	263,736

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
4.	P30059	BISHOP MUSEUM, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENT OF THE BISHOP MUSEUM'S HAWAIIAN HALL COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS		400			
		DESIGN		400			
		CONSTRUCTION		1,200		50	
		EQUIPMENT				1,950	
		TOTAL FUNDING	AGS	2,000 C		2,000 C	
4.01.		BISHOP MUSEUM, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE BISHOP MUSEUM'S AMY B.H. GREENWELL VISITOR EDUCATION CENTER TO BE LOCATED IN CAPTAIN COOK, KONA, ON THE ISLAND OF HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN				200	
		CONSTRUCTION				800	
		TOTAL FUNDING	AGS		C	1,000 C	
LNR101 - PUBLIC LANDS MANAGEMENT							
5.	E0302	DLNR HAZARDOUS WASTE MANAGEMENT PLAN, STATEWIDE					
		PLANS FOR DEVELOPMENT OF A HAZARDOUS WASTE MANAGEMENT PLAN FOR PUBLIC LANDS.					
		PLANS		250			
		TOTAL FUNDING	LNR	250 B			B
6.	E0304	PLANNING FOR THE DEVELOPMENT OF PUBLIC LANDS, STATEWIDE					
		PLANS FOR MARKET ANALYSIS, FEASIBILITY STUDIES, MASTER PLANNING, ENVIRONMENTAL STUDIES, AND OTHER PLANNING ACTIVITIES FOR THE DEVELOPMENT OF UNDERUTILIZED PUBLIC LANDS STATEWIDE FOR THE PURPOSE OF INCREASED REVENUE GENERATION.					
		PLANS		500			
		TOTAL FUNDING	LNR	500 B			B
7.	P30060	OLD PUUNUI QUARRY SITE ROCKFALL MITIGATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO MITIGATE ROCKFALL CONDITIONS ON STATE LANDS AT THE OLD PUUNUI QUARRY SITE IN NUUANU.					
		PLANS		100			
		DESIGN		155			
		CONSTRUCTION				2,600	
		TOTAL FUNDING	LNR	255 B			B
			LNR		C	2,600 C	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
8.	P30061	KOMO MAI DRIVE ROCKFALL MITIGATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO MITIGATE ROCKFALL CONDITIONS ON STATE LANDS ABOVE KOMO MAI DRIVE.					
		PLANS		100			
		DESIGN		100			
		CONSTRUCTION				3,200	
		TOTAL FUNDING	LNR	200B			B
			LNR		C	3,200C	
9.	P30062	WAIKIKI BEACH MAINTENANCE, OAHU					
		DESIGN AND CONSTRUCTION FOR BEACH MAINTENANCE AT WAIKIKI BEACH, INCLUDING WIDENING OF THE BEACH BY REPLENISHING THE SAND BETWEEN THE NORTH KUHIO BEACH GROIN AND THE KAPAHULU STORM DRAIN.					
		DESIGN		50			
		CONSTRUCTION		650			
		TOTAL FUNDING	LNR	700B			B
9.01.		MOANALUA STREAM DREDGING, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DREDGING OF MOANALUA STREAM FROM THE STREAM MOUTH TO THE VICINITY OF MOANALUA FREEWAY. PROJECT TO INCLUDE BATHY-MATRIC SURVEY TO DETERMINE STREAM DEPTHS.					
		PLANS				50	
		DESIGN				250	
		CONSTRUCTION				700	
		TOTAL FUNDING	LNR		C	500C	
			LNR		S	500S	
9.02.		TRUST FOR PUBLIC LAND, MAUI					
		LAND ACQUISITION FOR 70 ACRES IN THE HANA DISTRICT FOR THE PROTECTION OF CULTURAL AND NATURAL RESOURCES FROM DEVELOPMENT AND TO ENSURE PUBLIC ACCESS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND				300	
		TOTAL FUNDING	LNR		C	100C	
			LNR		R	200R	
9.03.		SOUTH KONA WILDERNESS LAND ACQUISITION, HAWAII					
		PLANS AND LAND ACQUISITION TO ACQUIRE PRIVATE LANDS CONTAINED WITHIN THE SOUTH KONA WILDERNESS AREA.					
		PLANS				10	
		LAND				490	
		TOTAL FUNDING	LNR		C	500C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
9.04.		PUPUKEA-PAUMALU LAND ACQUISITION, OAHU					
		LAND ACQUISITION TO ACQUIRE LAND IN THE PUPUKEA-PAUMALU AREA OF THE NORTH SHORE OF OAHU.					
		LAND				1,000	
		TOTAL FUNDING	LNR		C	1,000C	

AGS221 - CONSTRUCTION

10. B101M HEALTH AND SAFETY REQUIREMENTS, STATEWIDE

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MITIGATION/ELIMINATION OF CONDITIONS HAZARDOUS TO HEALTH AND SAFETY, INCLUDING THE REMOVAL OF HAZARDOUS MATERIALS AND/OR CORRECTIONS OF PHYSICAL CONDITIONS IN STATE FACILITIES TO MEET CURRENT CODE AND/OR SAFETY REQUIREMENTS, STATEWIDE.

DESIGN		45		45
CONSTRUCTION		200		200
EQUIPMENT		5		5
TOTAL FUNDING	AGS	250C		250C

11. E109 CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.

PLANS		7,496		7,496
LAND		1		1
DESIGN		1		1
CONSTRUCTION		1		1
EQUIPMENT		1		1
TOTAL FUNDING	AGS	7,500C		7,500C

11.01. N101 KAILUA HIGH SCHOOL ACCESS ROAD, OAHU

PLANS, LAND ACQUISITION, AND DESIGN TO PROVIDE A NEW ACCESS ROAD TO KAILUA HIGH SCHOOL.

PLANS				100
LAND				100
DESIGN				600
TOTAL FUNDING	AGS		C	800C

11.02. DEF07 RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES, STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION TO RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES TO INCREASE THE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		NUMBER OF PUBLIC SHELTERS AVAILABLE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1
		DESIGN					399
		CONSTRUCTION					1,600
		TOTAL FUNDING	AGS		N		2,000N

AGS233 - BUILDING REPAIRS AND ALTERATIONS

12. CSD01 LUMP SUM CIP - PUBLIC BUILDING IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC OFFICE BUILDINGS, STATEWIDE. PROJECT MAY INCLUDE ROOFING, AIR CONDITIONING, ELEVATOR, OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC FACILITIES.

DESIGN			200		200
CONSTRUCTION			800		800
TOTAL FUNDING	AGS		1,000C		1,000C

SUB201 - CITY AND COUNTY OF HONOLULU

12.01. MAKIKI COMMUNITY LIBRARY, RENOVATIONS AND IMPROVEMENTS, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO THE MAKIKI COMMUNITY LIBRARY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

DESIGN					100
CONSTRUCTION					4,399
EQUIPMENT					1
TOTAL FUNDING	CCH			C	4,500C

SUB301 - COUNTY OF HAWAII

12.02. MOUNTAIN VIEW SENIOR CENTER, COMPLETION OF KITCHEN AND RESTROOMS, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE COMPLETION OF THE KITCHEN AND RESTROOMS AT THE MOUNTAIN VIEW SENIOR CENTER.

DESIGN					49
CONSTRUCTION					300
EQUIPMENT					1
TOTAL FUNDING	COH			C	350C

12.03. KAWAILANI STREET BRIDGE REPLACEMENT, HAWAII

CONSTRUCTION TO REPLACE THE KAWAILANI STREET BRIDGE.

CONSTRUCTION					1,000
TOTAL FUNDING	COH			C	1,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
12.04.		TRANSITIONAL SHELTER FOR THE HOMELESS, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A SHELTER FOR THE HOMELESS IN WEST HAWAII.					
		PLANS					50
		DESIGN					150
		CONSTRUCTION					800
		TOTAL FUNDING	COH		C		500C
			COH		S		500S
SUB401 - COUNTY OF MAUI							
12.05.		BINHI AT ANI COMMUNITY CENTER, MAUI					
		CONSTRUCTION FOR THE BINHI AT ANI COMMUNITY CENTER.					
		CONSTRUCTION					350
		TOTAL FUNDING	COM		C		350C
12.06.		MAUI ARTS AND CULTURAL CENTER, RENOVATIONS AND IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO THE MAUI ARTS AND CULTURAL CENTER.					
		DESIGN					1
		CONSTRUCTION					499
		TOTAL FUNDING	COM		C		500C
SUB501 - COUNTY OF KAUAI							
13.	P30063	ANTONE K. VIDINHA STADIUM COMPLEX, RUBBERIZED TRACK, KAUAI					
		DESIGN AND CONSTRUCTION FOR A 400 METER RUBBERIZED TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			60		
		CONSTRUCTION			800		
		TOTAL FUNDING	COK		430C		C
			COK		430S		S
13.01.		LIHUE SEWER SYSTEM IMPROVEMENTS, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE LIHUE SEWER SYSTEM.					
		DESIGN					1
		CONSTRUCTION					398
		EQUIPMENT					1
		TOTAL FUNDING	COK		C		400C
13.02.		WAIMEA SEWER SYSTEM IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIMEA SEWER SYSTEM.					
		DESIGN					50
		CONSTRUCTION					400
		TOTAL FUNDING	COK		C		450C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
13.03.		ADOLESCENT RESIDENTIAL TREATMENT FACILITY, KAUAI					
		DESIGN AND CONSTRUCTION FOR AN ADOLESCENT RESIDENTIAL TREATMENT FACILITY ON KAUAI.					
		DESIGN					60
		CONSTRUCTION					500
		TOTAL FUNDING	COK		C		560C''

SECTION 6. Part V, Act 200, Session Laws of Hawaii 2003, is amended:

(1) By amending section 78 to read as follows:

“SECTION 78. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$1,312,000 for fiscal year 2003-2004 and the sum of [~~\$1,327,000~~] \$1,369,000 for fiscal year 2004-2005 shall be used for Hawaii community development authority capital improvements program staff costs, statewide.”

(2) By adding a new section to read as follows:

“SECTION 78.1. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$4,200,000 for fiscal year 2004-2005 shall used for infrastructure improvements within the Kakaako Makai area; provided further that the funds shall not be utilized for any purposes that would facilitate the implementation of a Punchbowl Street Extension, including but not limited to, plans, land acquisition, design and construction.”

(3) By adding a new section to read as follows:

“SECTION 78.2. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$450,000 for fiscal biennium 2003-2005 shall be used for an economic master plan for the Kalaeloa Community Development District; and provided further that no funds shall be expended unless matched on 1:1 basis with funds from federal contributions.”

(4) By amending section 79 to read as follows:

“SECTION 79. Provided that of the special funds appropriation for airports administration (TRN 195), the sum of \$1,750,000 for fiscal year 2003-2004 and the sum of [~~\$1,750,000~~] \$1,900,000 for fiscal year 2004-2005 shall be used for airports division capital improvements program staff costs, statewide.”

(5) By amending section 80 to read as follows:

“SECTION 80. Provided that of the special funds appropriation for harbors administration (TRN 395), the sum of \$750,000 for fiscal year 2003-2004 and the sum of [~~\$750,000~~] \$890,000 for fiscal year 2004-2005 shall be used for harbors division capital improvements program staff costs, statewide.”

(6) By amending section 83 to read as follows:

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“SECTION 83. Provided that of the special funds appropriation for school-based budgeting (EDN 100), the sum of \$250,000 for fiscal year 2003-2004 and the sum of [~~\$250,000~~] \$350,000 for fiscal year 2004-2005 shall be used for department of education capital improvements program staff costs, statewide.”

(7) By adding a new section to read as follows:

“SECTION 83.1. Provided that of the general obligation bond fund appropriation for public lands management (LNR 101), the sum of \$500,000 for fiscal biennium 2003-2005 shall be used for the dredging of Moanalua Stream; and provided further that no funds shall be expended unless matched on 1:1 basis with funds from the City and County of Honolulu.”

(8) By adding a new section to read as follows:

“SECTION 83.2. Provided that of the general obligation bond fund appropriation for public lands management (LNR 101), the sum of \$100,000 for fiscal biennium 2003-2005 shall be used for land acquisition for 70 acres in Hana for the protection of cultural and natural resources from development; and provided further that no funds shall be expended unless matched on a 2:1 (private/state) basis with funds from private contributions.”

(9) By adding a new section to read as follows:

“SECTION 101.1. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>G-151A</u>	<u>\$ 561,346 C</u> ”

(10) By adding a new section to read as follows:

“SECTION 101.2. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>G-92</u>	<u>\$ 2,332 B</u> ”

(11) By adding a new section to read as follows:

“SECTION 101.3. Any law to the contrary notwithstanding, the appropriation under Act 7, Special Session Laws of Hawaii 1993, section 23, in the amount of \$208,140 or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed.”

(12) By adding a new section to read as follows:

“SECTION 101.4. Any law to the contrary notwithstanding, the appropriations under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>G-1</u>	<u>\$ 4,764 B</u>
<u>G-4</u>	<u>16 B</u>
<u>G-36</u>	<u>1,203 B''</u>

(13) By adding a new section to read as follows:

“SECTION 101.5. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1995, section 99, as amended and renumbered by Act 287, Session Laws of Hawaii 1996, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>G-8</u>	<u>\$ 5,103 B</u>
<u>G-10</u>	<u>810 B''</u>

(14) By adding a new section to read as follows:

“SECTION 101.6. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>G-5</u>	<u>\$ 7,000 B</u>
<u>G-6</u>	<u>23,325 B</u>
<u>G-11</u>	<u>30,252 B</u>
<u>G-27</u>	<u>50,000 B</u>
<u>G-31</u>	<u>75,000 B</u>
<u>G-33A</u>	<u>1,772 B</u>
<u>G-38</u>	<u>250,000 B</u>
<u>G-51</u>	<u>82,324 B</u>
<u>G-110A</u>	<u>128,245 C</u>
<u>G-119</u>	<u>321,977 C</u>
<u>K-3</u>	<u>1,600,000 C''</u>

(15) By adding a new section to read as follows:

“SECTION 101.7. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>G-2</u>	<u>\$141,644 B</u>
<u>G-3</u>	<u>30,678 B</u>
<u>G-4</u>	<u>16,202 B</u>
<u>G-5</u>	<u>208,840 B</u>
<u>G-6</u>	<u>16,485 B</u>
<u>G-7</u>	<u>21,101 B</u>
<u>G-8</u>	<u>96,123 B</u>
<u>G-9</u>	<u>68,533 B</u>
<u>G-11</u>	<u>533,764 B</u>
<u>G-14</u>	<u>133,039 B</u>

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<u>Item No.</u>	<u>Amount (MOF)</u>
<u>G-14A</u>	<u>35,555 B</u>
<u>G-22</u>	<u>75,824 B</u>
<u>G-22A</u>	<u>75,000 B</u>
<u>G-23</u>	<u>107,000 B</u>
<u>G-24</u>	<u>57,389 B</u>
<u>G-26</u>	<u>11,242 B</u>
<u>G-74</u>	<u>219,582 C</u>
<u>G-94</u>	<u>336,546 C</u>
<u>G-98A</u>	<u>510,190 C''</u>

(16) By adding a new section to read as follows:

“SECTION 101.8. Any law to the contrary notwithstanding, the appropriations under Act 259, Session Laws of Hawaii 2001, section 91, as amended and renumbered by Act 3, Third Special Session Laws of Hawaii 2001, section 3, and as further amended and renumbered by Act 177, Session Laws of Hawaii 2002, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-14</u>	<u>\$ 400,000 C</u>
<u>A-15A</u>	<u>500,000 C</u>
<u>A-17C</u>	<u>1,400,000 C</u>
<u>E-2</u>	<u>196,276 C</u>
<u>G-1</u>	<u>85,051 B</u>
<u>G-2</u>	<u>4,000 B</u>
<u>G-3</u>	<u>9,447 B</u>
<u>G-5</u>	<u>92,863 B</u>
<u>G-6</u>	<u>69,133 B</u>
<u>G-7</u>	<u>274,303 B</u>
<u>G-8</u>	<u>17,840 B</u>
<u>G-10</u>	<u>245,414 B</u>
<u>G-13</u>	<u>37,777 B</u>
<u>G-15</u>	<u>11,041 B</u>
<u>G-17</u>	<u>321,196 B</u>
<u>G-17B</u>	<u>3,012,000 B</u>
<u>G-17C</u>	<u>160,000 B</u>
<u>G-20</u>	<u>16,000 B</u>
<u>G-20A</u>	<u>16,244 B</u>
<u>G-24</u>	<u>1,151,000 B</u>
<u>G-30C</u>	<u>2,500,000 C</u>
<u>G-33A</u>	<u>475,000 C</u>
<u>G-33C</u>	<u>1,000,000 C</u>
<u>G-36B</u>	<u>250,000 C</u>
<u>G-39A</u>	<u>250,000 C</u>
<u>G-40</u>	<u>200,000 C</u>
<u>G-42</u>	<u>325,000 C</u>
<u>G-42A</u>	<u>450,000 C</u>
<u>G-42B</u>	<u>1,200,000 C</u>
<u>G-42C</u>	<u>520,000 C</u>
<u>G-43D</u>	<u>1,000,000 C</u>
<u>G-45</u>	<u>1,400,000 C</u>
<u>G-46A</u>	<u>1,651,000 C</u>

<u>Item No.</u>	<u>Amount (MOF)</u>
I-1	18,735,000 C
I-4A	1,200,000 C
K-11A	2,895,000 C
K-21	1,000,000 C"

SECTION 7. Part VII, Act 200, Session Laws of Hawaii 2003, is amended:

(1) By amending section 121 to read as follows:

"SECTION 121. The governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects of natural disasters, or unforeseen emergencies, provided that the effects of the natural disaster, or unforeseen emergencies create an urgent need to pursue a course of action which is in the best interest of the State; provided that no funds shall be expended without a formal declaration of a natural disaster or emergency by the governor; provided further that the governor shall use the project adjustment fund authorized in part II and described in part IV to accomplish the purposes of this section."

(2) By amending section 122 to read as follows:

"SECTION 122. Notwithstanding any provision in part III of this Act, the governor is authorized to transfer savings or unrequired balances as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of natural disasters or other unforeseen emergencies; provided that no funds shall be expended without a formal declaration of a natural disaster or emergency by the governor; provided that the effects of such natural disaster or emergencies create an urgent need to pursue a course of action which is in the best interest of the State; and provided further that the use of such funds does not conflict with general law."

(3) By adding a new section to read as follows:

"SECTION 134.1. Provided that the governor shall submit a copy of any plan used to secure federal funds for the Compacts of Free Association to the legislature; provided further that a copy of this plan shall be submitted to the legislature no later than two days after it is submitted to the federal government."

(4) By adding a new section to read as follows:

"SECTION 145.1. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$25,000, or so much thereof as necessary for fiscal year 2004-2005, may be expended at the discretion of the attorney general to host a meeting of the Conference of Western Attorneys General."

(5) By adding a new section to read as follows:

"SECTION 145.2. Provided that the department of budget and finance shall coordinate the evaluation all executive branch agency contract expenditures for capital improvement program projects during fiscal year 2004 to determine whether the use of funds to contract services fall within the scope of the project title and description; provided further that the report shall include but not be limited to a complete list of capital improvement program projects under which expenditures were made organized by department, a list of contracts entered into, and the purpose and product derived of each expenditure; provided further that the department of budget and finance shall provide the policies used to ensure that expenditure of capital improvement program project funds are consistent with the purposes of the

appropriation; and provided further that the department of budget and finance director shall submit this report to the legislature no later than August 15, 2004.”

(6) By adding a new section to read as follows:

“SECTION 145.3. Provided that the department of budget and finance shall post on its website all finance memorandums and executive memorandums on the same day that the memorandums are distributed; provided further that all attachments to the memorandums shall also be posted; and provided further that all finance memorandums and executive memorandums issued since January 1, 2000 shall also be posted.”

(7) By adding a new section to read as follows:

“SECTION 145.4. Provided that the director of finance shall provide a report to the legislature on progress made toward recovering funds erroneously paid to state employees for sick leave in excess of sick leave credits accumulated by the employees; provided further that the report shall include by not be limited to a breakdown of unrecovered balances by department and by means of financing; and provided further that this report shall be submitted to the legislature not later than thirty days prior to the convening of the 2005 regular session.”

(8) By adding a new section to read as follows:

“SECTION 145.5. Provided that any federal funds received by the State of Hawaii pursuant to the Compact of Free Association Amendments Act of 2003 (Public Law 108-188) shall be deposited into the general fund and may only be expended as general funds. No funds received by the State of Hawaii pursuant to the Compact of Free Association Amendments Act of 2003 shall be expended as federal funds.”

(9) By adding a new section to read as follows:

“SECTION 145.6. With the approval of the governor, the department of education for appropriations in part II and part IV of this Act for repair and maintenance may delegate responsibility and transfer funds to the construction program (AGS 221), for implementation of such repair and maintenance, when it is determined by such agencies that is advantages to do so.”

SECTION 8. MISCELLANEOUS. If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 9. In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 10. Material to be repealed is bracketed and stricken. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the bracketed material or the underscoring.

SECTION 11. Nothing in this Act shall affect the validity or continuing effectiveness of any provisions of Act 200, Session Laws of Hawaii 2003, not repealed or modified by this Act.

SECTION 12. EFFECTIVE DATE. This Act shall take effect upon its approval.

(Became law on April 30, 2004, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Notes

1. Should be underscored.
2. Prior to amendment “, respectively” appeared here.

ACT 42

H.B. NO. 2280

A Bill for an Act Relating to State Bonds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, Section 13 of the State Constitution which states: “Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance,” the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in Article VII, Section 13 of the State Constitution, which states in part: “General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance.” Article VII, Section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including “reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year” and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under said Article VII, Section 13.
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2003-2004 and estimated for each fiscal year from 2004-2005 to 2006-2007, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
2000-2001	3,412,365,536	
2001-2002	3,412,344,368	
2002-2003	3,766,052,192	
2003-2004	3,768,413,745	653,096,996
2004-2005	3,967,963,632	675,053,302
2005-2006	4,178,771,779	709,316,490
2006-2007	(not applicable)	734,767,531

For fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 2000-2001, 2001-2002, and 2002-2003 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 2003, dated November 26, 2003. The net general fund revenues for fiscal years 2003-2004 to 2005-2006 are estimates, based on general fund revenue estimates made as of March 10, 2004, by the council on revenues, the body assigned by Article VII, Section 7 of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by Article VII, Section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of March 1, 2004, is as follows for fiscal year 2004-2005 to fiscal year 2010-2011:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2004-2005	312,129,139
2005-2006	450,101,690
2006-2007	486,659,795
2007-2008	490,928,698
2008-2009	507,574,047
2009-2010	410,322,429
2010-2011	388,438,213

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2010-2011 to fiscal year 2023-2024 when the final installment of \$20,486,031 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the

state comptroller's bond fund report as of February 29, 2004, adjusted for (1) appropriations to be funded by general obligations bonds or reimbursable general obligation bonds as provided in Act 200, Session Laws of Hawaii 2003 (the General Appropriations Act of 2003), to be expended in fiscal year 2004-2005; (2) appropriations to be funded by general obligation bonds as provided in Act 120, Session Laws of Hawaii 2003 (the Judiciary Appropriations Act of 2003), to be expended in fiscal year 2004-2005; (3) lapses provided in House Bill No. 1800, H.D. 1, S.D. 1, C.D. 1¹ (the Supplemental Appropriations Act of 2004), amounting to \$47,433,302, the total amount of authorized but unissued general obligation bonds is \$961,954,425. The total amount of general obligation bonds authorized by this Act is \$460,896,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized in this Act is \$1,422,850,425. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to Article VII, Section 13 of the State Constitution.

- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007, the State proposed to issue \$225,000,000 in general obligation bonds for the remainder of fiscal year 2003-2004, \$225,000,000 the first half of fiscal year 2004-2005, \$225,000,000 during the second half of fiscal year 2004-2005, \$225,000,000 during the first half of fiscal year 2005-2006, \$225,000,000 during the second half of fiscal year 2005-2006, \$150,000,000 during the first half of fiscal year 2006-2007, and \$150,000,000 during the second half of fiscal year 2006-2007. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fourth year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds that are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds that the State proposes to issue during the fiscal years 2003-2004 to 2005-2006 is \$1,125,000,000. An additional \$300,000,000 is proposed to be issued in fiscal year 2006-2007. The total amount of \$1,125,000,000 which is proposed to be issued through fiscal year 2005-2006 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$1,422,850,425, as reported in paragraph (4), except for \$297,850,425. It is assumed that the appropriations to which an additional \$297,850,425 in bond issuance needs to be applied will have been encumbered as of June 30, 2006. The \$300,000,000 which is proposed to be issued in fiscal year 2006-2007 will be sufficient to meet the requirements of the June 30, 2006 encumbrances in the amount of \$297,850,425. The amount of assumed encumbrances as of June 30, 2006 is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount

of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds which is proposed to be issued by June 30, 2006, and the amount of June 30, 2006 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2006-2007, the legislature finds that in the aggregate, the amount of bonds which is proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds, which are excludable from the amount of each proposed bond issued because:

- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
- (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 3.15 per cent for the ten years from fiscal year 2004-2005 to fiscal year 2013-2014. For the purpose of this declaration, the assumption is made that one per cent of each bond issue will be excludable from the debt limit, an assumption that the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13 of the State Constitution for the fiscal years 2003-2004, 2004-2005, 2005-2006, and 2006-2007 are as follows:

<u>Fiscal Year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution</u>
2003-2004	3,852,172,809
2004-2005	4,173,895,425
2005-2006	4,368,162,220
2006-2007	4,367,214,568

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of not more than 5.5 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
Remainder FY 2003-2004 \$222,750,000	653,096,996	528,865,297 (2008-2009)
1st half FY 2004-2005 \$222,750,000	675,053,302	541,116,547 (2008-2009)
2nd half FY 2004-2005 \$222,750,000	675,053,302	553,367,797 (2008-2009)
1st half FY 2005-2006 \$222,750,000	709,316,490	565,619,047 (2008-2009)
2nd half FY 2005-2006 \$222,750,000	709,316,490	577,870,297 (2008-2009)
1st half FY 2006-2007 \$148,500,000	734,767,531	586,037,797 (2008-2009)
2nd half FY 2006-2007 \$148,500,000	734,767,531	594,205,297 (2008-2009)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and

outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 1800, H.D. 1, S.D. 1, C.D. 1¹ (the Supplemental Appropriations Act of 2004) and House Bill No. 2300, H.D. 1, S.D. 1, C.D. 1² (the Judiciary Supplemental Appropriations Act of 2004), passed by this regular session of 2004, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of general obligation bonds so issued shall not exceed \$460,896,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with Section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved April 30, 2004.)

Notes

1. Act 41.
2. Act 38.

ACT 43

H.B. NO. 2743

For the complete final text of this law, see Act 52 beginning on page 272 which reflects the Legislature's override of all the item vetoes in this Act.

A Bill for an Act Relating to Non-General Funds.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature determines that there is in the animal quarantine special fund at least \$800,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the animal quarantine

special fund to the general fund the sum of \$800,000 \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 2. The legislature determines that there is in the agricultural loan reserve fund at least \$900,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of \$900,000 \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 3. The legislature determines that there is in the stadium special fund at least \$600,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 4. The legislature determines that there is in the state motor pool revolving fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the state motor pool revolving fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 5. The legislature determines that there is in the state identification revolving fund at least \$300,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the state identification revolving fund to the general fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 6. The legislature determines that there is in the medicaid investigations recovery fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 7. The legislature determines that there is in the research subaccount of the tourism special fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the research subaccount of the tourism special fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 8. The legislature determines that there is in the foreign-trade zones special fund at least \$400,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the foreign-trade zones special fund to the general fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 9. The legislature determines that there is in the Aloha tower fund at least \$750,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the Aloha tower fund to the general fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 10. The legislature determines that there is in the Hawaii community development revolving fund at least \$10,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the

Hawaii community development revolving fund to the general fund the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 11. The legislature determines that there is in the dwelling unit revolving fund at least \$10,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the dwelling unit revolving fund to the general fund the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 12. The legislature determines that there is in the human resources development special fund at least \$150,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the human resources development special fund to the general fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 13. The legislature determines that there is in the environmental response revolving fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the environmental response revolving fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 14. The legislature determines that there is in the environmental management special fund at least \$2,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the environmental management special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 15. The legislature determines that there is in the special land and development fund at least \$1,500,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of ~~\$1,500,000~~ \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 16. The legislature determines that there is in the special land and development fund at least \$1,500,000 in excess of the requirements of the fund. On January 1, 2005, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of ~~\$1,500,000~~ \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 17. The legislature determines that there is in the state highway fund at least \$11,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the state highway fund to the general fund the sum of ~~\$11,000,000~~ \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 18. The legislature determines that there is in the state highway fund at least \$1,500,000 in excess of the requirements of the fund. On June 29, 2005, the director of finance is authorized to transfer from the state highway fund to the general fund the sum of ~~\$1,500,000~~ \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

PART II

SECTION 19. Section 28-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All unencumbered and unexpended moneys in excess of [\$1,000,000] \$500,000 remaining on balance in the tobacco enforcement special fund at the close of June 30 of each year shall lapse to the credit of the state general fund.”

SECTION 20. Section 107-11, Hawaii Revised Statutes, is amended to read as follows:

“§107-11 Parking; control by comptroller. (a) The comptroller may assess and collect reasonable fees for parking for all government officials and employees, install parking meters, and restrict and otherwise control parking on all state lands within the comptroller’s jurisdiction.

(b) The comptroller may make such rules ~~[and regulations]~~ as may be found necessary to carry out the objects and provisions of this section relating to the control and restriction of parking on all lands of the State which are within the comptroller’s jurisdiction. The rules ~~[and regulations]~~ shall be ~~[promulgated]~~ adopted as provided in chapter 91.

(c) Any person who violates any of the rules adopted by the comptroller shall be fined not more than \$50 for each violation; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291.

(d) The comptroller is authorized to confer the powers of police officers, including the power to serve and execute warrants, arrest offenders, and serve notices and orders, to employees of the department of accounting and general services who are engaged as special officers to enforce this section.

(e) There is hereby created a fund to be known as the “state parking revolving fund” which shall be used to carry out the purposes of this section. Such amounts shall be expended by the comptroller from the fund, as may be necessary, to defray the cost of paving parking areas, the purchase and installation of parking meters and the operation thereof, and of other parking facilities on state land within the comptroller’s jurisdiction. The state parking revolving fund shall be ~~[utilized]~~ used to conform with the special fund depository requirements under section 39-62 for all revenues and user taxes received as the result of the issuance of any state parking facility undertaking or loan program revenue bonds.

(f) All fees, charges, and other moneys collected pursuant to this section, and all revenues and user taxes received pursuant to section 39-62 as the result of the issuance of any state parking facility undertaking or loan program revenue bonds shall be deposited in the state parking revolving fund.

(g) All moneys in excess of \$500,000 remaining on balance in the state parking revolving fund on June 30 of each fiscal year shall lapse to the credit of the state general fund. On July 1 of each year, the director of finance is authorized to transfer any excess funds in the state parking revolving fund to the state general fund.”

PART III

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

ACT 44

SECTION 22. This Act shall take effect on June 30, 2004.

(Approved May 3, 2004.)

Note

1. Item vetoed, replaced with “\$0”, and initialed “LL”, but see Act 52 beginning on page 272 which overrode all of the item vetoes in this Act.

ACT 44

H.B. NO. 2003

A Bill for an Act Relating to the Illegal Use of Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that comprehensive legislation is needed to ensure the safety of Hawaii residents due to the use of and addiction to crystal methamphetamine (especially in the form known as “ice”), which has reached epidemic proportions and is currently considered a public health crisis.

In the summer of 2003, the speaker of the house of representatives and president of the senate appointed eighteen legislators to the Joint House-Senate Task Force on Ice and Drug Abatement (Task Force). The mission of the Task Force was to find a solution to the ice epidemic and draft comprehensive legislation to address the problems created by the ice epidemic. After nearly eighty hours of informational briefings, public hearings, and site visits, and the input of over four hundred persons, the Task Force concluded that the solution to the ice epidemic is to treat the present generation of ice abusers and prevent future generations from becoming substance abusers. At the request of the leaders of both houses, a report on the findings and recommendations of the Task Force was submitted in January 2004. This measure incorporates legislation recommended in the “Final Report of the Task Force” (See “Final Report of the Task Force,” pp. 12-13).

Accordingly, the legislature adopts the findings and recommendations in the “Final Report of the Task Force” relating to the ice epidemic that:

- (1) The ice epidemic is a serious public health crisis that must be immediately abated to protect Hawaii’s future generations and its resources. It appears that the ice epidemic began in 1997 (Wolkoff, “Methamphetamine Abuse: An Overview for Health Care Professionals,” Hawaii Medical Journal, Vol. 56, February 1997). The use and abuse of this powerful drug has permeated all facets of our community, workplaces, prisons, and law enforcement activities. The data overwhelmingly suggest an ice epidemic that is growing, that, if left unchecked, will consume government resources and further destroy lives and families;
- (2) Hawaii has been experiencing a second wave of the disease in the last few years, as the longer term effects of the early onset of the disease now manifest themselves in the addicted population (Task Force testimony of William Wood). For example, based on information reported to the Task Force, most recovering addicts report long-term use of ice in the range of five to ten years or longer. Trends in adult arrests for drug possession in Hawaii for the past ten years reflect this second wave. Arrests for possession of ice (reported as a “nonnarcotic” drug) peaked in 1997, then declined for two years. Starting in 2000, arrests for ice possession began to dramatically increase. In 2002, ice possession arrests had nearly tripled since 1999 and more than doubled the peak in 1997 (Office of the Attorney General of the State of Hawaii, Crime in Hawaii 2002, p. 110). Similarly, although less dramatic, the

drug offenses in the manufacture and sale of ice over the past ten years reflect the same peak in 1997 followed by a one year decline, then a steady increase since 1999 to their highest levels in 2002 (*Id.*);

- (3) Ice addiction is now the number one substance for which publicly funded treatment is sought, surpassing admissions for alcohol addiction. Between 1998 and 2002, admissions into treatment for ice increased by approximately eighty per cent (Task Force testimony by Elaine Wilson, DOH/ADAD). Nearly every adult in recovery who spoke to the Task Force reported ice as the primary drug of choice. Similarly, every agency testifying before the Task Force that provided adult drug treatment services reported ice as the primary drug of choice in its treatment population;
- (4) Deaths associated with ice have dramatically risen over the years. Oahu deaths associated with ice usage rose from eleven in 1991, to twenty-seven in 1998, and to sixty-two in 2002 (Task Force testimony of William Wood). Similarly, on the neighbor islands, deaths associated with methamphetamine usage rose from one in 1998 to twenty in 2002 (Task Force testimony of Clifford Wong); and
- (5) Hawaii's ice usage by those persons arrested is among the highest in the nation. Among adult men arrested who tested positive for drug use, 37.4 per cent tested positive for ice in 2001. The ice usage rate for arrested males is the highest in the nation. Among adult women arrested who tested positive for drug use, 36.1 per cent tested positive for ice in 2001. Hawaii's ice usage among female arrestees is among the highest across the nation ("ADAM, NDCS Report" February 2003).

The legislature further finds that Hawaii has a compelling state interest in enacting the following laws to control the use of ice and other illegal drugs:

- (1) Deter the proliferation of drug trafficking and importation into Hawaii;
- (2) Protect children from the dangers of clandestine methamphetamine laboratories and homes where illegal substances may harm them;
- (3) Expand access to treatment for first time nonviolent drug offenders;
- (4) Allow families to involuntarily commit a family member to substance abuse outpatient treatment;
- (5) Create parity for treatment for substance abuse addiction; and
- (6) Encourage the development of clean and sober homes for persons recovering from substance abuse.

PART I. CRIMINAL SANCTIONS

SECTION 2. The legislature finds that new and enhanced criminal penalties are needed to protect its citizens from the effects of the ice epidemic. These new laws are necessary:

- (1) To support law enforcement's efforts at drug interdiction;
- (2) To discourage the proliferation of drug traffickers; and
- (3) For public safety.

Children who are exposed to both the dangers of ice and household members abusing ice must be protected. Child Welfare Services estimates that eighty-five to ninety per cent of its cases involved parents addicted to ice or other drugs. Children of parents who abuse drugs are three times more likely to be abused and four times more likely to be neglected (Reid, et al. "No Safe Haven: Children of Substance Abusing Parents," The National Center on Addiction and Substance Abuse at Columbia University, January 1999. See, "Final Report of the Task Force," pp. 29-32, for more details on the effects on children due to ice usage in the home.)

Law enforcement reports that children have been found in drug houses and methamphetamine labs. Police have discovered methamphetamine labs in many areas of Hawaii, including vehicles and homes located near schools. A recent study by the Office for Victims of Crime describes a frightening problem of children exposed to injury and health risks due to exposure to toxic chemicals caused by equipment and the process used to manufacture ice. Further, children who are present in clandestine labs or drug houses are often unsupervised, subject to hazardous lifestyles such as weapons on the premises, household food and other items contaminated by poisonous substances, and unhygienic conditions (Swetlow, Karen, "Children at Clandestine Methamphetamine Labs: Helping Meth's Youngest Victims," U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crimes, June 2003).

Nearly half of the adolescents in school report experimentation with illegal drugs by the twelfth grade, forty per cent by the tenth grade, and over twenty per cent by the eighth grade (See, "Final Report of the Task Force", pp. 39-40). Over five thousand adolescents in school need treatment for illegal drug use (See, "Final Report of the Task Force", p. 34). This means that distribution of illegal drugs to students in school remains a fertile ground for drug traffickers, using minors as conduits for drug distribution. This practice must be stopped.

The sale of ice is a lucrative illegal business in Hawaii. The price for one-fourth gram of ice ranges from \$50 to \$250 and one pound of ice goes for \$20,000 to \$45,000 (2004 Report of the federal High Intensity Drug Trafficking Area program (HIDTA)). The daily cost of ice addiction is estimated to range between \$50 to \$170 per person (Task Force Testimony of Keith Kamita, Edward Kubo). While no precise numbers are available, daily ice usage is estimated at a street value of between \$1.5 to over \$5 million (Task Force Testimony of Peter Carlisle, Edward Kubo). This large consumption of ice reinforces the need for treatment for the addicted population to reduce the demand for this toxic drug.

The purpose of this part is to:

- (1) Add new laws that establish penalties for the manufacture or distribution of crystal methamphetamine similar to federal law, 21 United States Code Section 841, and permit the court to impose fines for clean up of methamphetamine materials and pay restitution to persons injured by the manufacture of methamphetamine;
- (2) Create enhanced penalties for persons who place children in danger while illegally manufacturing any controlled substance;
- (3) Create a new offense of promoting controlled substances through the use of a minor with a higher class of offense for drug trafficking in or near schools and parks; and
- (4) Amend drug paraphernalia laws to be more consistent with the federal laws to more easily convict a person for the sale of drug paraphernalia.

SECTION 3. Chapter 712, part IV, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§712-A Manufacturing a controlled substance with a child present. (1) Except as provided in subsection (2), any person convicted of manufacturing a controlled substance in violation of this chapter, who commits the offense knowing that a child under the age of sixteen is present in the structure where the offense occurs, shall be sentenced to a term of two years imprisonment to run consecutively to the maximum indeterminate term of imprisonment for the conviction of any offense involving the manufacturing of a controlled substance.

(2) Any person convicted of manufacturing a controlled substance in violation of this chapter, who commits the offense knowing that a child under the age of

eighteen is present in the structure where the offense occurs and causes the child to suffer serious or substantial bodily injury as defined in section 707-700, shall be sentenced to a term of five years imprisonment to run consecutively to the maximum indeterminate term of imprisonment for the conviction of any offense involving the manufacturing of a controlled substance.

(3) As used in this section, "structure" means any house, apartment building, shop, warehouse, building, vessel, cargo container, motor vehicle, tent, recreational vehicle, trailer, or other enclosed space capable of holding a child and equipment for the manufacture of a controlled substance.

§712-B Unlawful methamphetamine trafficking; penalties. (1) A person commits the offense of unlawful methamphetamine trafficking if the person knowingly manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense, one or more preparations, compounds, mixtures, or substances of methamphetamine, or any of its salts, isomers, and salts of isomers.

(2) The manufacture, distribution, or dispensing of or possession with intent to manufacture, distribute, or dispense one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more of methamphetamine, or any of its salts, isomers, and salts of isomers is a class A felony with a mandatory minimum prison term of five years; provided however:

- (a) If death or serious bodily injury as defined in section 707-700 to any person other than the defendant, results from the manufacture, distribution, or dispensing of or possession with intent to manufacture, distribute, or dispense any methamphetamine substance, conviction under this section shall be treated as a class A felony, with a mandatory minimum prison term of ten years and a fine not to exceed \$4,000,000 if the defendant is an individual, or a fine not to exceed \$10,000,000 if the defendant is other than an individual; and
- (b) If the defendant has been convicted of any felony drug offense prior to conviction of the offense under this section, conviction under this section shall be punishable by a term of life imprisonment with the possibility of parole, with a mandatory minimum prison term of fifteen years and a fine not to exceed \$8,000,000 if the defendant is an individual, or a fine not to exceed \$20,000,000 if the defendant is other than an individual.

(3) The manufacture, distribution, or dispensing of one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-eighth ounce of methamphetamine, or any of its salts, isomers, and salts of isomers is a class B felony with a mandatory minimum prison term of three years; provided however:

- (a) If death or serious bodily injury as defined in section 707-700 to any person other than the defendant results from the manufacture, distribution or dispensing of any methamphetamine substance, conviction under this section shall be treated as a class B felony, with a mandatory minimum prison term of five years and a fine not to exceed \$2,000,000 if the defendant is an individual, or a fine not to exceed \$5,000,000 if the defendant is other than an individual; and
- (b) If the defendant has been convicted of any felony drug offense prior to conviction of the offense under this section, conviction under this section shall be treated as a class A felony, with a mandatory minimum prison term of eight years and a fine not to exceed \$4,000,000 if the defendant is an individual, or a fine not to exceed \$10,000,000 if the defendant is other than an individual.

- (c) If the distribution or dispensing of any amount of a methamphetamine substance is to a minor, then conviction under this section shall be treated as a class A felony, with a mandatory minimum prison term of five years.

(4) A defendant convicted of the offense of unlawful methamphetamine trafficking shall be sentenced in accordance with this section, notwithstanding sections 706-620(2), 706-659, 706-640, and 706-641. When sentencing a defendant convicted of the offense of unlawful methamphetamine trafficking, the court may order restitution or reimbursement to:

- (a) The state or county government for the cost incurred for any cleanup associated with the manufacture, distribution, or dispensing of methamphetamine, or any of its salts, isomers, and salts of isomers by the defendant; and
- (b) Any other person injured as a result of the manufacture, distribution, or dispensing of methamphetamine, or any of its salts, isomers, and salts of isomers, by the defendant.

§712-C Promoting a controlled substance through a minor. (1) A person age eighteen or over commits the offense of promoting a controlled substance through a minor if the person knowingly employs, hires, uses, persuades, induces, entices, or coerces a minor to facilitate the illegal distribution of a controlled substance.

(2) The offense of promoting a controlled substance through a minor is a class B felony unless the offense occurs in, on, or near the real property comprising a school, school vehicles, or public parks as prohibited under section 712-1249.6, in which case it is a class A felony.”

SECTION 4. Section 329-1, Hawaii Revised Statutes, is amended by amending the definitions of “deliver” or “delivery” and “drug paraphernalia” to read as follows:

““Deliver” or “delivery” means the actual, constructive, or attempted transfer or sale from one person to another of a controlled substance[;] or drug paraphernalia, whether or not there is an agency relationship.

“Drug paraphernalia” means all equipment, products, and materials of any kind which are used, primarily intended for use, or primarily designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes[;] but is not limited to:

- (1) Kits used, primarily intended for use, or primarily designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a prohibited controlled substance can be derived;
- (2) Kits used, primarily intended for use, or primarily designed for use in manufacturing, compounding, converting, producing, processing, or preparing prohibited controlled substances;
- (3) Isomerization devices used, primarily intended for use, or primarily designed for use in increasing the potency of any species of plant which is a prohibited controlled substance;
- (4) Testing equipment used, primarily intended for use, or primarily designed for use in identifying, or in analyzing the strength, effectiveness, or purity of prohibited controlled substances;

- (5) Scales and balances used, primarily intended for use, or primarily designed for use in weighing or measuring prohibited controlled substances;
- (6) Diluents and adulterants; such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, primarily intended for use, or primarily designed for use in cutting prohibited controlled substances;
- (7) Separation gins and sifters used, primarily intended for use, or primarily designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, prohibited marijuana;
- (8) Blenders, bowls, containers, spoons, and mixing devices used, primarily intended for use, or primarily designed for use in compounding prohibited controlled substances;
- (9) Capsules, balloons, envelopes, and other containers used, primarily intended for use, or primarily designed for use in packaging small quantities of prohibited controlled substances;
- (10) Containers and other objects used, primarily intended for use, or primarily designed for use in storing or concealing prohibited controlled substances;
- (11) Hypodermic syringes, needles, and other objects used, primarily intended for use, or primarily designed for use in parenterally injecting prohibited controlled substances into the human body;
- (12) Objects used, primarily intended for use, or primarily designed for use in ingesting, inhaling, or otherwise introducing prohibited marijuana, cocaine, hashish, [øf] hashish oil, or methamphetamine into the human body, such as:
 - (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (B) Water pipes;
 - (C) Carburetion tubes and devices;
 - (D) Smoking and carburetion masks;
 - (E) Roach clips: meaning objects used to hold burning materials, such as marijuana cigarettes, that have become too small or too short to be held in the hand;
 - (F) Miniature cocaine spoons, and cocaine vials;
 - (G) Chamber pipes;
 - (H) Carburetor pipes;
 - (I) Electric pipes;
 - (J) Air-driven pipes;
 - (K) Chillums;
 - (L) Bongs; and
 - (M) Ice pipes or chillers.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this chapter;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;

- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to a person or persons whom the owner or person in control knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- (13) The existence and scope of legitimate uses for the object in the community; and
- (14) Expert testimony concerning its use.’’

SECTION 5. Section 712-1241, Hawaii Revised Statutes, is amended to read as follows:

“§712-1241 Promoting a dangerous drug in the first degree. (1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) One ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
 - (ii) One and one-half ounce or more, containing one or more of any of the other dangerous drugs; or
- (b) Distributes~~[:]~~, except for methamphetamine as provided in section 712-B:
 - (i) Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or
 - (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (A) One-eighth ounce or more, containing ~~[methamphetamine,]~~ heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
 - (B) Three-eighths ounce or more, containing any other dangerous drug;
- (c) Distributes any dangerous drug in any amount to a minor~~[:]~~ except for methamphetamine as provided in section 712-B; or
- (d) Manufactures a dangerous drug in any amount~~[:]~~, except for methamphetamine as provided in section 712-B; provided that this subsection shall not apply to any person registered under section 329-32.
- (2) Promoting a dangerous drug in the first degree is a class A felony.

~~[(3) Notwithstanding any law to the contrary, except for first-time offenders sentenced under section 706-622.5, if the commission of the offense of promoting a~~

~~dangerous drug in the first degree under this section involved the possession, distribution, or manufacture of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of imprisonment of twenty years with a mandatory minimum term of imprisonment, the length of which shall be not less than one year and not greater than ten years, at the discretion of the sentencing court for a conviction under subsection (1)(a), (1)(b), or (1)(c) and not less than ten years for a conviction under subsection (1)(d). The person convicted shall not be eligible for parole during the mandatory term of imprisonment.]”~~

SECTION 6. Section 712-1242, Hawaii Revised Statutes, is amended to read as follows:

“§712-1242 Promoting a dangerous drug in the second degree. (1) A person commits the offense of promoting a dangerous drug in the second degree if the person knowingly:

- (a) Possesses twenty-five or more capsules, tablets, ampules, dosage units, or syrettes, containing one or more dangerous drugs; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
 - (ii) One-fourth ounce or more, containing any dangerous drug; or
- (c) Distributes any dangerous drug in any amount[.], except for methamphetamine as provided in section 712-B.

(2) Promoting a dangerous drug in the second degree is a class B felony.

~~[(3) Notwithstanding any law to the contrary, except for first-time offenders sentenced under section 706-622.5, if the commission of the offense of promoting a dangerous drug in the second degree under this section involved the possession or distribution of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of imprisonment of ten years with a mandatory minimum term of imprisonment, the length of which shall be not less than six months and not greater than five years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.]”~~

SECTION 7. Section 712-1243, Hawaii Revised Statutes, is amended to read as follows:

“§712-1243 Promoting a dangerous drug in the third degree. (1) A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.

~~[(3) Notwithstanding any law to the contrary, except for first-time offenders sentenced under section 706-622.5, if the commission of the offense of promoting a dangerous drug in the third degree under this section involved the possession or distribution of methamphetamine, the person convicted shall be sentenced to an indeterminate term of imprisonment of five years with a mandatory minimum term of imprisonment, the length of which shall be not less than thirty days and not greater than two and a half years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.]”~~

SECTION 8. Section 712-1249.6, Hawaii Revised Statutes, is amended to read as follows:

“§712-1249.6 Promoting a controlled substance in, on, or near schools, school vehicles, or public parks. (1) A person commits the offense of promoting a controlled substance in, on, or near schools, school vehicles, or public parks if the person knowingly:

- (a) Distributes or possesses with intent to distribute a controlled substance in any amount in or on the real property comprising a ~~[public or private elementary or secondary]~~ school or public park;
- (b) Distributes or possesses with intent to distribute a controlled substance in any amount within seven hundred and fifty feet of the real property comprising a ~~[public or private elementary or secondary]~~ school or public park; ~~[or]~~
- (c) Distributes or possesses with intent to distribute a controlled substance in any amount while on any school vehicle, or within ten feet of a parked school vehicle during the time that the vehicle is in service for or waiting to transport school children~~[-]; or~~
- (d) Manufactures methamphetamine or any of its salts, isomers, and salts of isomers, within seven hundred and fifty feet of the real property comprising a school or public park.

~~(2)¹ Promoting a controlled substance in, on, or near schools, school vehicles, or public parks is a class C felony.] A person who violates subsection (1)(a), (b), or (c) is guilty of a class C felony. A person who violates subsection (1)(d) is guilty of a class A felony.~~

~~(3) Any person with prior conviction or convictions under [this²] subsection (1)(a), (b), or (c) is punishable by a term of imprisonment of not less than two years and not more than ten years.~~

~~(4) Any individual convicted under subsection (3) of this section shall not be eligible for parole until the individual has served the minimum sentence required by such subsection.~~

~~(5) For the purposes of this section, “school vehicle” means every school vehicle as defined in section 286-181 and any regulations adopted pursuant to that section.~~

~~(6) For purposes of this section, “school” means any public or private preschool, kindergarten, elementary, intermediate, middle secondary, or high school.”~~

PART II. TREATMENT FOR FIRST TIME NONVIOLENT DRUG OFFENDER

SECTION 9. The legislature passed Act 161, Session Laws of Hawaii 2002, (Act 161) intending to divert first-time nonviolent drug offenders to drug treatment instead of prison. During the past year, approximately two hundred fifty offenders were identified as eligible for diversion to treatment. Fewer than half of these offenders actually began treatment, with the remaining offenders returning to prison, completing their probation or parole terms, or being subject to other legal action.

Since its passage, local and state prosecutors have complained about the law, claiming that it is a “get out of jail free card” for offenders and that it has taken away discretion ordinarily reserved to the court. (See, “Final Report of the Task Force,” pp. 75-78 for a complete discussion of the controversy relating to Act 161.) The original language of Act 161 caused confusion over whether the mandatory requirement to sentence a first-time drug offender to probation took precedence over the repeat offender sentencing laws. Recently, the Hawaii Supreme Court ruled in

State of Hawaii v. Smith, No. 25726, Slip Opinion dated December 26, 2003, that the repeat offender sentencing laws took precedence over the mandatory requirement to sentence a first-time drug offender to probation.

The Task Force recommended that Act 161 should be amended to clear up the confusion regarding repeat offenders and the criteria for eligibility for drug treatment, and permit more discretion by the court in sentencing. The legislature finds that diversion to drug treatment instead of prison is consistent with the solution to cure the ice epidemic. Accordingly, the legislature intends that a broader group of nonviolent drug offenders will be eligible for consideration for probation in order to undergo drug treatment. The purpose of this amendment is to provide the court with discretion in sentencing a first-time nonviolent drug offender to probation regardless of whether the offender has prior convictions. The legislature strongly urges courts to consider transferring the most severely addicted offenders or addicted offenders with criminal histories to the jurisdiction of the drug court as a condition of being sentenced to probation.

SECTION 10. Section 353-66, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) ~~[Parole shall not be revoked for]~~ The Hawaii paroling authority may require a paroled prisoner to undergo and complete a substance abuse treatment program when the paroled prisoner has committed a [first] violation of the terms and conditions of parole involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-B, or involving possession or use of drug paraphernalia under section 329-43.5; ~~provided that the person shall be required to undergo and complete a drug treatment program as a condition of continued parole.~~ If the [person] paroled prisoner fails to complete the [drug] substance abuse treatment program ~~[and if no other suitable treatment is amenable to the offender,]~~ or the Hawaii paroling authority determines that the paroled prisoner cannot benefit from any substance abuse program, the [person] paroled prisoner shall be subject to revocation of parole and return to incarceration. [The] As a condition of parole, the Hawaii paroling authority may require the [person to contribute] paroled prisoner to:

- (1) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (2) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (3) Contribute to the cost of the [drug] substance abuse treatment program[-]; and
- (4) Comply with any other terms and conditions for parole.

As used in this subsection [“drug abuse treatment program”], “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility[-, but the services do not require the expenditure of state moneys beyond the limits of available appropriations.] by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.”

SECTION 11. Section 706-622.5, Hawaii Revised Statutes, is amended to read as follows:

“[§706-622.5] Sentencing for first-time drug offenders; expungement. (1) ~~[Notwithstanding any penalty or sentencing provision under part IV of chapter 712,]~~ Notwithstanding section 706-620(3), a person convicted for the first time for any offense under part IV of chapter 712 involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-B, or involving possession or use of drug paraphernalia under section 329-43.5, ~~[who is nonviolent, as determined by the court after reviewing the:~~

- (a) ~~Criminal history of the defendant;~~
- (b) ~~Factual circumstances of the offense for which the defendant is being sentenced; and~~
- (c) ~~Other information deemed relevant by the court;~~

~~shall be sentenced in accordance with subsection (2); provided that the person does not have a conviction for any violent felony for five years immediately preceding the date of the commission of the offense for which the defendant is being sentenced.] is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:~~

- (a) The court has determined that the person is nonviolent after reviewing the person’s criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index; and
- (c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.

(2) A person eligible under subsection (1) ~~[shall]~~ may be sentenced to probation to undergo and complete a ~~[drug]~~ substance abuse treatment program ~~[-] if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated in order to protect the public. If the person fails to complete the [drug] substance abuse treatment program and [if no other suitable treatment is amenable to the offender,] the court determines that the person cannot benefit from any other suitable substance abuse treatment program,~~ the person shall be ~~[returned to court and]~~ subject to sentencing under the applicable section under this part. As a condition of probation under this subsection, the court [shall require an assessment as to the treatment needs of the defendant, conducted by a person certified by the department of health to conduct the assessments. The drug treatment program for the defendant shall be based upon the assessment.] may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history of relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person [to] contribute to the cost of the [drug] substance

abuse treatment program[-] and comply with deadlines for entering into the substance abuse treatment program.

(3) For the purposes of this section, [~~“drug treatment program”~~] “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility[, ~~but the services do not require the expenditure of state moneys beyond the limits of available appropriations.~~] by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

(4) The court, upon written application from a person sentenced under this part, shall issue a court order to expunge the record of [~~arrest for that particular~~] conviction for that particular offense; provided that a person has successfully completed the substance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section shall be eligible for one time only for expungement under this subsection.

(5) Nothing in this section shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.”

SECTION 12. Section 706-625, Hawaii Revised Statutes, is amended by amending subsection (7) to read as follows:

~~“(7) [Probation shall not be revoked for a first]~~ The court may require a defendant to undergo and complete a substance abuse treatment program when the defendant has committed a violation of the terms and conditions of probation involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-B, or involving possession or use of drug paraphernalia under section 329-43.5[; ~~provided that the person shall be required to undergo and complete a drug treatment program as a condition of continued probation.~~]. If the [person] defendant fails to complete the [drug] substance abuse treatment program [~~and if no other suitable treatment is amenable to the offender,~~] or the court determines that the defendant cannot benefit from any other suitable substance abuse treatment program, the [person] defendant shall be subject to revocation of probation and [~~return to~~] incarceration. The court may require the [person to contribute] defendant to:

- (a) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (b) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (c) Contribute to the cost of the [drug] substance abuse treatment program[-]; and
- (d) Comply with any other terms and conditions of probation.

As used in this subsection, [~~“drug treatment program”~~] “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility[, ~~but the services do not require the expenditure of state moneys beyond the limits of available appropriations.~~] by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.”

PART III. TORT LIABILITY FOR DRUG DEALERS

SECTION 13. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
DRUG DEALER LIABILITY**

§ -1 Definitions. As used in this chapter:

“Illegal drug” means “dangerous drugs” or a “harmful drug” as defined in section 712-1240.

“Illegal drug market” means the support system of illegal drug-related operations, from production to retail sales, through which an illegal drug reaches the user.

“Illegal drug market target community” is the area described under section -5.

“Individual drug user” means the individual whose illegal drug use is the basis of an action brought under this chapter.

“Level four offense” means the illegal possession of sixteen ounces or more or the illegal distribution of four ounces or more of an illegal drug.

“Level one offense” means the illegal possession of one-fourth ounce or more, but less than four ounces, or the illegal distribution of less than one ounce of an illegal drug.

“Level three offense” means the illegal possession of eight ounces or more, but less than sixteen ounces, or the illegal distribution of two ounces or more, but less than four ounces, of an illegal drug.

“Level two offense” means the illegal possession of four ounces or more, but less than eight ounces, or the illegal distribution of one ounce or more, but less than two ounces, of an illegal drug.

“Participate in the illegal drug market” means to illegally:

- (1) Distribute an illegal drug;
- (2) Possess with an intent to distribute;
- (3) Commit an act intended to facilitate the marketing or distribution of an illegal drug;
- (4) Commit any of the marketing or distribution of an illegal drug; or
- (5) Conspire to commit any of the foregoing acts.

“Period of illegal drug use” means, in relation to the individual drug user, the entire time of the individual’s illegal use of an illegal drug. In cases where the testimony of the individual drug user is unavailable, the period of illegal drug use is presumed to commence two years before the earliest known use by the individual drug user, unless the defendant proves otherwise by clear and convincing evidence.

“Place of illegal drug activity” means, in relation to the individual drug user, the place in which the individual possesses or uses an illegal drug or in which the individual resides, attends school, or is employed during the period of the individual’s illegal drug use.

“Place of participation” means, in relation to a defendant in an action brought under this chapter, the place at which the person participates in the illegal drug market or at which the person resides, attends school, or is employed during the period of the person’s participation in the illegal drug market.

§ -2 Recovery of damages. (a) One or more of the following persons may bring an action to recover for damages caused by an individual’s use of an illegal drug:

- (1) A parent, legal guardian, child, spouse, or sibling of the individual drug user;
 - (2) An individual who was exposed to an illegal drug in utero;
 - (3) An employer of the individual drug user;
 - (4) A medical facility, insurer, governmental entity, employer, or other entity that funds a drug treatment program or employee assistance program for the individual drug user or that otherwise expended money on behalf of the individual drug user; or
 - (5) A person injured as a result of the intentional, knowing, reckless, or negligent actions of an individual drug user.
- (b) A person entitled to bring an action under this section may seek damages from one or more of the following:
- (1) A person who knowingly distributed, or knowingly participated in the chain of distribution of, the illegal drug that was used by the individual drug user;
 - (2) A person who knowingly participated in the illegal drug market, but only if:
 - (A) The place of illegal drug activity by the individual drug user is within the illegal drug market target community of the defendant;
 - (B) The defendant's participation in the illegal drug market was involved with the same type of illegal drug used by the individual drug user; and
 - (C) The defendant participated in the illegal drug market at any time during the individual drug user's period of illegal drug use.
- (c) A person entitled to bring an action under this section may recover all of the following damages:
- (1) Economic damages, including but not limited to the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss associated with the illegal drug use;
 - (2) Noneconomic damages, including but not limited to physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses associated with an individual's use of an illegal drug;
 - (3) Exemplary damages;
 - (4) Reasonable attorney's fees; and
 - (5) Costs of suit, including but not limited to reasonable expenses for expert testimony.

§ -3 Limitations for recovery of damages; state recovery. (a) An individual drug user may not bring an action for damages caused by the use of an illegal drug, except as otherwise provided in this section. An individual drug user may bring an action for damages caused by that individual's use of an illegal drug only if all of the following conditions are met:

- (1) The individual has not used an illegal drug within the six months before filing the action; and
 - (2) The individual continues to remain free of the use of an illegal drug throughout the pendency of the action.
- (b) A person entitled to bring an action under this section may seek damages only from a person who distributed, or is in the chain of distribution of, the illegal drug that was used by the individual drug user.

(c) A person entitled to bring an action under this section may recover only the following damages:

- (1) Economic damages, including but not limited to the cost of treatment, rehabilitation, and medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, accidents or injury, and any other pecuniary loss associated with the person's illegal drug use;
- (2) Reasonable attorney's fees; and
- (3) Costs of suit including but not limited to reasonable expenses for expert testimony.

(d) Twenty-five per cent of any actual recovery of damages by the plaintiff under this section, whether by settlement, execution on a judgment, or otherwise, shall be turned over to the State for deposit into the general fund.

§ -4 Third party cases. Notwithstanding any other law to the contrary, no person shall be liable under this chapter under civil principles of vicarious liability.

§ -5 Illegal drug market target community. A person who participates in the illegal drug market at a level one, two, three, or four offense shall be considered to have participated in the following illegal drug market target communities:

- (1) For a level one offense, the area identified by the tax map section in which the defendant's place of participation is situated;
- (2) For a level two offense, the area identified by the tax map zone in which the defendant's place of participation is situated;
- (3) For a level three offense, the county; provided that in the case of Maui and Kauai counties, the target community shall be any island in the respective county; and
- (4) For a level four offense, the entire State.

§ -6 Joinder of parties. (a) Two or more persons may join in one action under this chapter as plaintiffs if their respective actions have at least one place of illegal drug activity in common, and if each plaintiff's illegal drug user's period of illegal drug use overlaps in time with each other.

(b) Two or more persons may be joined in one action under this chapter as defendants if those persons are liable to at least one plaintiff.

(c) A plaintiff need not be interested in obtaining and a defendant need not be interested in defending against all the relief demanded. Judgment may be given for one or more plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.

§ -7 Comparative responsibility. (a) An action by an individual drug user shall be governed by the principles of comparative responsibility. Comparative responsibility attributed to the plaintiff does not bar recovery but diminishes the award of compensatory damages proportionally, according to the measure of responsibility attributed to the plaintiff.

(b) The burden of proving the comparative responsibility of the plaintiff is on the defendant, which shall be shown by clear and convincing evidence.

(c) Comparative responsibility shall not be attributed to a plaintiff who is not an individual drug user.

§ -8 Contribution among and recovery from multiple defendants. Except as otherwise provided in this chapter, part II of chapter 663 shall apply to a cause of action established by this chapter.

§ -9 Standard of proof; effect of criminal drug convictions. (a) Proof of participation in the illegal drug market in an action brought under this chapter shall be shown by clear and convincing evidence. Except as otherwise provided in this chapter, other elements of the cause of action shall be shown by a preponderance of the evidence.

(b) A person against whom recovery is sought who has a final criminal conviction pursuant to section 712-1241, 712-1242, 712-1244, 712-1245, or 712-A, 712-B, or 712-C or the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, 84 Stat. 1236 (21 U.S.C. §801 et seq.), arising out of an act or acts within the meaning of the term “participate in the illegal drug market” is estopped from denying participation in the illegal drug market. Such a conviction creates a rebuttable presumption that the person participated in the illegal drug market during the two years preceding the date of an act giving rise to a conviction.

(c) The absence of a criminal drug conviction of a person against whom recovery is sought does not bar an action against that person under this chapter.

§ -10 Defense. It is a defense to any action brought pursuant to this chapter that the person who possessed, distributed, or facilitated the marketing or distribution of a dangerous or harmful drug did so under authority of law as a practitioner, as an ultimate user of the drug pursuant to a lawful prescription, or as a person otherwise authorized by law.

A law enforcement officer or agency, the State, or a person acting at the direction of a law enforcement officer or agency or the State is not liable for participating in the illegal drug market if the participation is in furtherance of an official investigation.

§ -11 Statute of limitations. (a) A claim under this chapter may not be brought against a person more than four years after that person participated in the illegal drug market.

(b) The limitation period provided for in this chapter is tolled during any time there is a criminal drug offense investigation conducted against the defendant by a governmental agency or there is a criminal drug offense charge, information, or indictment pending against defendant.

§ -12 Stay of action. On motion by a governmental agency involved in a drug investigation or prosecution, an action brought under this chapter shall be stayed until the completion of the criminal investigation or prosecution that gave rise to the motion for a stay of the action.

§ -13 Effect on existing laws. This chapter is not intended to alter any law regarding intra-family tort immunity.”

PART IV. LAWS AFFECTING PUBLIC SCHOOLS

SECTION 14. Section 302A-1134.6, Hawaii Revised Statutes, is amended to read as follows:

“[H]§302A-1134.6[)] **Zero tolerance policy.** (a) Any child who possesses, sells, or uses a dangerous weapon or switchblade knife, while attending school or while attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(b) ~~[Any]~~ Except as provided in subsection (f), any child who possesses, sells, consumes, or uses intoxicating liquor or ~~[illicit]~~ illegal drugs, while attending school or while attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(c) ~~[Any]~~ Except as provided in subsection (f), any child who reasonably appears to have consumed or used intoxicating liquor or ~~[illicit]~~ illegal drugs prior to attending school or attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(d) In any case of exclusion from school, the due process procedures as set forth in the provisions of Hawaii administrative rules relating to student discipline shall apply.

(e) If a child is excluded from attending school for more than ten days, the superintendent or the superintendent's designee shall ensure that substitute educational activities or other appropriate assistance are provided, such as referral for appropriate intervention and treatment services, as determined by the principal in consultation with the appropriate school staff.

(f) Prior to implementing any decision to exclude the child from attending school due to a violation of subsection (b) or (c), the child shall be referred to and assessed by a certified substance abuse treatment counselor on a priority basis to determine whether the child needs treatment for substance abuse or dependency. If the assessment determines that the child:

- (1) Needs treatment for substance abuse or dependency and:
 - (A) If outpatient treatment is immediately available or the child is placed into a residential treatment facility, the child shall not be excluded from school and all disciplinary action shall be deferred; provided that the child:
 - (i) Enters into treatment;
 - (ii) Complies with the terms and conditions of the treatment program; and
 - (iii) Remains in treatment until discharged from treatment.
 If the child completes the treatment program, no disciplinary action based on the original offense shall be taken and all records of disciplinary action relating to the original offense shall be expunged; or
 - (B) If no treatment program is immediately available, the child shall not be excluded from attending school, but may be transferred to an alternative learning center, pending admission to a treatment program. Disciplinary action shall be deferred in accordance with paragraph (1)(A) during the pendency of the child's treatment and all records of disciplinary action relating to the original offense shall be expunged upon completion of the treatment program; or
- (2) Does not need treatment for substance abuse or dependency, disciplinary action of exclusion from school may be taken in accordance with the department's rules.

Nothing in this subsection prohibits the principal from suspending the child pursuant to the crisis suspension rules of the department for a period not to exceed ten days, provided the principal commences the referral and assessment process required under this section during the crisis suspension period.

~~[(f)]~~ (g) For purposes of this section:

~~[(4)]~~ “Dangerous weapon” means a dirk, dagger, butterfly knife, blackjack, slug shot, billy, metal knuckles, or other instrument whose sole design and purpose is to inflict bodily injury or death; provided that firearms are excluded from this definition~~[:]~~.

~~[(2)]~~ ~~“Hicit drugs”~~ “Illegal drugs” means ~~[substances;]~~ the possession, distribution, ingestion, manufacture, sale, or delivery of substances which are prohibited under chapter 329 and chapter 712, part IV~~[: and]~~.

~~[(3)]~~ “Switchblade knife” is as defined in section 134-52.

~~[(g)]~~ (h) The board of education shall adopt rules in accordance with chapter 91 to implement~~[:]~~this section~~[:]~~.”

PART V. INSURANCE COVERAGE FOR SUBSTANCE ABUSE

SECTION 15. The legislature finds that persons addicted to crystal methamphetamine may pose a threat to public safety. Chronic ice addicts may become dangerous, engage in violent conduct, or exhibit psychotic and paranoid behavior. Ice addicts also may be driven to steal property in order to generate revenue to support their addiction. Law enforcement estimates that ninety per cent of property crimes are committed in Hawaii due to ice addicts trying to find a revenue source to support their addiction. (See, “Final Report of the Task Force,” p. 49).

Treatment for ice addiction is essential if the ice epidemic is to be stopped. Treatment for ice addiction must be sufficient in terms of duration and type of treatment in order for it to be successful.

Current health plans offer limited substance abuse treatment benefits. These benefits are insufficient to treat the specific nature of ice addiction and ice addicts typically are also addicted to other substances. The restrictions on benefit levels and treatment episodes pose barriers to effective and appropriate treatment for ice addiction.

Treatment for persons addicted to ice and other substances must be on parity with treatment for any other physical disease or illness as such treatment will not be a significant burden on private insurance plan members. Private insurance plans report low utilization for substance abuse treatment and less than one per cent of benefits paid are attributable to substance abuse treatment. (See, “Final Report of Task Force,” pp. 84-89 for a complete discussion of health insurance benefits for substance abuse treatment.)

The purpose of this part is to ensure that substance abuse addiction is covered under a health insurance plan in the same way as a physical disease or illness. Parity is extended to alcohol and drug abuse because ice addicts may use multiple substances as part of their addiction.

SECTION 16. Chapter 431M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§431M- Parity treatment for alcohol or drug dependency. Unless greater benefits are required by this chapter for alcohol and substance services and benefits, services and benefits provided by health insurance plans subject to section 431M-2 for drug and alcohol dependency shall be equal to and co-extensive with health insurance coverage for physical disease and illnesses. Nothing in this section shall require the health insurance plan to provide residential treatment benefits except as it may provide for physical disease and illnesses and in accordance with an approved treatment plan by the health plan provider.”

SECTION 17. Section 16 shall be exempt from the impact assessment report by the auditor under section 23-51, Hawaii Revised Statutes. The legislature finds

that an emergency situation exists in the state that demands an immediate legislative response, and that the slight financial impact of a rise in premiums is likely to be incalculable (Auditor Report No. 88-6).

SECTION 18. The treatment of drug and alcohol dependency provided under medical plans participating in QUEST and the fee for services program administered by the department of human services shall be equal to and co-extensive with QUEST and fee for services program coverage for physical disease and illnesses. Nothing in this section shall require QUEST and the fee for services program to provide residential treatment benefits except as it may provide for physical disease and illnesses.

PART VI. CIVIL COMMITMENT FOR SUBSTANCE ABUSE

SECTION 19. The Task Force received testimony from many families about their efforts to obtain help for a family member addicted to drugs. These families reported that they were forced to have the addicted family member arrested as a wake-up call for the ice addict to recognize that the addict needed treatment. The legislature finds that families should not have to resort to using the criminal justice system to obtain help for an addicted family member. The purpose of this part is to enact an expedited process that permits family members to obtain a court order to send an addicted family member to involuntary outpatient treatment.

SECTION 20. Chapter 334, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CIVIL COMMITMENT FOR SUBSTANCE ABUSE OUTPATIENT TREATMENT

§334-A Definitions. As used in this part:

“Family member” means any individual who is a member of the immediate family of the person who is the subject of the petition, including spouse, child, parent, grandparent, or any related individual who resides in the same household as the individual who is the subject of the petition.

“Outpatient treatment” includes any substance abuse treatment provided through individual or group therapy, day or partial day programs, and intensive day treatment and which does not require the individual to reside on a twenty-four-hour basis in the facility for more than three days to benefit from the treatment program.

“Petitioner” means the family member who applies to the court for an order to require an individual to enter into an outpatient treatment program.

“Respondent” means the individual who is eighteen years of age or older who is the subject of the petition for a court order to require the individual to enter into an outpatient treatment program.

§334-B Petition. Any family member may petition the family court for an order requiring a respondent to enter into an outpatient treatment program for substance abuse. The petition shall be in writing under penalty of perjury and include facts relating to:

- (1) The conduct of the respondent that indicates substance abuse or addiction;
- (2) The respondent’s history of substance abuse, treatment, and relapse;
- (3) The effects of the respondent’s conduct on the family;

- (4) The petitioner's good faith belief that the respondent poses an imminent danger to self or to others if the respondent does not receive treatment;
- (5) The availability of treatment and financial resources to pay for treatment; and
- (6) Any other reason for seeking court intervention.

§334-C Notice of hearing and service of petition on respondent. The court shall set a time and date for hearing on the petition, within ten days of the filing of the petition. The notice of hearing and petition shall be served on the respondent.

§334-D Hearing and court order. (a) The court shall conduct a hearing to consider all facts relating to the petition. The court may postpone the hearing and order the respondent to be assessed for substance abuse or addiction by a certified substance abuse counselor, at the petitioner's expense.

(b) The court may grant the petition if it finds clear and convincing evidence that:

- (1) The respondent has a history of substance abuse and refuses to enter treatment voluntarily;
- (2) The respondent has a family support system that will encourage and participate in the respondent's treatment program;
- (3) The respondent can benefit from outpatient treatment and is capable of surviving safely in the community with the family support system and if outpatient treatment is received;
- (4) The respondent or the petitioner has financial resources to pay for the outpatient treatment program;
- (5) The respondent poses an imminent danger to self or to others if treatment is not received; and
- (6) The respondent understands the nature of the proceeding and the effect of the court order to enter into outpatient treatment.

(c) The court order shall be limited to ninety days of outpatient treatment. Upon renewal of the petition, the court may extend the petition for an additional ninety days.

§334-E Treatment costs, fees, and costs for petition process. The petitioner shall bear all fees and costs related to bringing the petition. The petitioner or respondent shall bear all costs of private treatment. Nothing in this part authorizes publicly funded substance abuse treatment. However, if the respondent is eligible to receive publicly funded treatment and such a program is available for the respondent, the court may order the treatment in such a program.

§334-F Discharge. If the respondent successfully completes the outpatient treatment program and is discharged from the program prior to the end of the court-ordered treatment period, the court order shall automatically lapse.

§334-G Failure to comply with court order. The court may impose sanctions for violation of the court order.

§334-H Application. Notwithstanding any other law to the contrary, this part shall apply to all petitions filed by family members seeking involuntary outpatient commitment of the respondent with substance abuse as the primary diagnosis."

PART VII. DRUG REHABILITATION HOMES

SECTION 21. The legislature finds that recovering addicts are likely to relapse from treatment if they return to the environment or community that contributed to the addiction. An essential part of the continuum of treatment includes access to clean and sober homes or transitional living homes that support the recovering addict and provide the recovering addict with a new community in which to live. The legislature finds that existing facilities for clean and sober homes or transitional living centers are limited and insufficient to handle the numbers of recovering addicts who can benefit from this living arrangement. Nearly all existing homes are independently operated and financially self-sufficient, without significant burden on public resources. Accordingly, the legislature finds that amendments to existing zoning laws would encourage the development of more clean and sober homes or transitional living homes as well as increase capacities for such homes.

SECTION 22. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Drug rehabilitation homes; permitted use in residential areas.

(a) For purposes of section 46-4, a drug rehabilitation home shall be considered a residential use of property and shall be a permitted use in residentially designated zones including, but not limited to, zones for single-family dwellings. No conditional use, permit, variance, or special exception shall be required for a residence used as a drug rehabilitation home.

(b) No drug rehabilitation home under subsection (a) shall be permitted unless a public informational meeting is first held in the affected community by the department of health.

(c) For purposes of this section, “drug rehabilitation home” means any facility that accommodates no more than ten unrelated persons and is operated by a community-based nonprofit agency licensed by the department of health, whose purpose is to facilitate the development of residential supportive living homes for persons in recovery from substance abuse. Drug rehabilitation homes include “clean and sober homes” that provide a structured environment of clean and sober living conditions to sustain recovery and “transitional living homes” that provide a supervised structured environment of clean and sober living conditions to sustain recovery.”

PART VIII. DRUG NUISANCE REMOVAL

SECTION 23. Section 322-1, Hawaii Revised Statutes, is amended to read as follows:

“§322-1 Removal, prevention. The department of health and its agents shall examine into all nuisances, foul or noxious odors, gases or vapors, water in which mosquito larvae exist, sources of filth, and all causes of sickness or disease, on shore, and in any vessel, which may be known to them or brought to their attention, which in their opinion are dangerous or injurious to health, and into any and all conditions created or existing which cause or tend to cause sickness or disease or to be dangerous or injurious to health, and shall cause the same to be abated, destroyed, removed, or prevented.

For purposes of this section, a nuisance shall include toxic materials that are used in or by-products of the manufacture or conversion of methamphetamine, and clandestine drug labs that manufacture methamphetamine.”

PART IX. CITIZEN EMPOWERMENT

SECTION 24. The legislature sympathizes with the many citizens who complained about the perceptions that law enforcement was not being responsive to drug activities within their communities. While the drug interdiction activities of law enforcement must necessarily remain covert in order to protect the investigative process, the legislature finds that improved communication between law enforcement and the communities will aid in the identification and prosecution of drug traffickers. Moreover, the legislature finds that communities should be empowered to assist law enforcement in containing illegal drug activities in their neighborhoods. Accordingly, the legislature finds that efforts by citizens to abate drug trafficking activities in their neighborhoods through the filing of private citizen complaints for nuisance abatement under part IV of chapter 712 should be supported by changes in the nuisance abatement laws to permit recovery for attorneys' fees and to protect citizens who complain about such nuisances in the same way as victims of crimes are protected.

The legislature further finds that the drug abatement activities undertaken by many community organizations, private organizations, and state and local government offices require a centralized coordinating agency to facilitate information sharing and technical support. The momentum started by community mobilization efforts to create public awareness of the ice epidemic is crucial to solving this public health crisis as well as to assist law enforcement in drug interdiction. The legislature designates the department of public safety to work with the communities on action plans, educate the communities about drug interdiction activities, assist communities with complaints regarding law enforcement's responsiveness to drug activities within the community, facilitate information sharing and provide technical support.

SECTION 25. Chapter 712, part V, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§712- Citizen's rights. Any citizen who brings a nuisance abatement suit against a place used for the purpose of committing drug offenses under part IV of this chapter or who files a complaint with the local police or drug nuisance abatement unit of the department of the attorney general shall be entitled to the same rights and protections of victims and witnesses in criminal proceedings in accordance with chapter 801D."

SECTION 26. Section 26-14.6, Hawaii Revised Statutes, is amended to read as follows:

"§26-14.6 Department of public safety. (a) The department of public safety shall be headed by a single executive to be known as the director of public safety.

(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all public or private correctional facilities and services, for the service of process, and for the security of state buildings.

(c) Effective July 1, 1990, the Hawaii paroling authority and the crime victim compensation commission are placed within the department of public safety for administrative purposes only.

(d) Effective July 1, 1990, the functions and authority heretofore exercised by:

- (1) The department of corrections relating to adult corrections and the intake service centers;
- (2) The judiciary relating to the sheriff's office and judiciary security personnel; and
- (3) The department of the attorney general relating to state law enforcement officers and narcotics enforcement investigators with the narcotics enforcement division,

shall be transferred to the department of public safety.

(e) Effective July 1, 1990, the functions and authority heretofore exercised by the department of health pursuant to chapters 329 and 329C, with the exception of sections 329-2, 329-3, and 329-4(3) to (8), shall be transferred to the department of public safety.

(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy", under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51, 183D-11, 187A-14, 201G-55, 201G-74, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 353-11, 383-71, 438-5, 445-37, 482E-4, 485-6, 501-42, 501-171, 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety.

(g) Effective January 1, 1993, the functions and authority heretofore exercised by the attorney general and the department of the attorney general relating to the executive security officers shall be transferred to the department of public safety.

(h) Effective July 1, 1999, the functions and authority heretofore exercised by the director of public safety and the department of public safety relating to after hours security contracts at department of education facilities, except for the security functions being performed by employees of the public library system as well as the contractual security services for the libraries, shall be transferred to the department of education.

(i) Effective January 1, 1993, the functions and authority heretofore exercised by the director of health and the department of health relating to uniformed security employees and security contracts at various state hospitals throughout the State shall be transferred to the department of public safety.

(j) Effective January 1, 1993, the functions and authority heretofore exercised by the director of human services and the department of human services relating to contractual security guard services shall be transferred to the department of public safety.

(k) Effective July 1, 1994, the functions and authority heretofore exercised by the adjutant general relating to security for national guard and state civil defense facilities in the Diamond Head complex, for after work hours, shall be transferred to the department of public safety.

(l) Effective July 1, 2002, the functions and authority heretofore exercised by the director of public safety and the department of public safety relating to after hours security contracts at department of education facilities, including all security functions being performed by employees of the public library system, as well as the contractual security services for the libraries, shall be transferred to the department of education and the public library system as appropriate.

(m) The department shall coordinate drug abatement efforts of the communities with the state, counties, and community agencies, by:

- (1) Facilitating sharing of resources and information;
- (2) Providing technical support for community mobilization groups;

- (3) Establishing community action plans for drug education, awareness, and prevention;
- (4) Facilitating problem solving in the delivery of law enforcement services by state and local agencies to the community.

The department shall submit an annual report to the legislature twenty days before the convening of each regular session, on the activities of the department relating to this mandate.”

SECTION 27. Section 712-1276, Hawaii Revised Statutes, is amended to read as follows:

“§712-1276 Costs and expenses. For any attorneys’ fees, costs, or expenses incurred in the closing of the building, premises, or place and keeping it closed, or incurred in enforcing the injunction prohibiting the person or persons causing the nuisance from residing or entering into the building, premises, or place in or upon which the nuisance exists, as well as the attorneys’ fees, costs, and expenses incurred by the party bringing the action, a reasonable sum shall be allowed by the court.”

SECTION 28. Section 712-1278, Hawaii Revised Statutes, is amended to read as follows:

“§712-1278 Fine, costs, lien on place. Any attorneys’ fees, costs, expenses, and fines imposed against any owner of a business, premises or place in any proceedings under this part shall be a lien upon such business, premises, or place, to the extent of the interest of such person therein, enforceable and collectible by execution issued by the order of the court.”

SECTION 29. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 30. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 31. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 32. In codifying the new sections added by sections 3, 13, and 20 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters or numbers used in designating the new sections in this Act.

SECTION 33. This Act shall take effect on July 1, 2004; provided sections 16 and 18 shall take effect on July 1, 2005 and be repealed on June 30, 2011; and provided further that the new subsection (m) added to Section 26-14.6, Hawaii Revised Statutes, in section 26⁴ of this Act shall be repealed on June 30, 2007.

(Vetoed by Governor and veto overridden by Legislature on April 30, 2004.)

Notes

1. So in original.
2. Prior to amendment “section” appeared here.
3. Edited pursuant to HRS §23G-16.5.
4. “Section 26” substituted for “section 25”.

A Bill for an Act Relating to State Funds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that expenditures from the emergency and budget reserve fund established by section 328L-3, Hawaii Revised Statutes, are needed to meet the emergency economic situation currently facing the State. The legislature determines that the moneys are urgently needed to maintain levels of programs that are essential to the public health, safety, and welfare. The legislature further finds that the grants and subsidies under this Act are in the public interest and serve the public health, safety, and welfare.

SECTION 2. There is appropriated out of the emergency and budget reserve fund the sum of \$90,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Hale Mahaolu for the personal care program for disabled or chronically ill frail adults and elders residing in Maui county.

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 3. There is appropriated out of the emergency and budget reserve fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005 to provide treatment services for child victims of intrafamilial sexual abuse, including psychological treatment and case management services for child victims and their families who are not covered under the child protective services system of the department of human services.

The sum appropriated shall be expended by the judiciary via the children's justice center in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 4. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Youth Services Network for its Transitional Living Program for Unserved Street Youth.

The sum appropriated shall be expended by the office of youth services, department of human services, for the purposes of this section.

SECTION 5. There is appropriated out of the emergency and budget reserve fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the residential alternative community care program.

The sum appropriated shall be expended by the department of human services in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 6. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the chore services program.

The sum appropriated shall be expended by the department of human services in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 7. There is appropriated out of the emergency and budget reserve fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Volunteer Legal Services Hawaii for its Na Keiki Law Center project focusing on protecting the legal rights of children.

The sum appropriated shall be expended by the office of community services, department of labor and industrial relations, for the purposes of this section.

SECTION 8. There is appropriated out of the emergency and budget reserve fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Domestic Violence Clearinghouse and Legal Hotline for Maui program services.

The sum appropriated shall be expended by the judiciary, circuit court of the second circuit, for the purposes of this section.

SECTION 9. There is appropriated out of the emergency and budget reserve fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2004-2005 for costs related to homeless assistance.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii, department of human services, in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 10. There is appropriated out of the emergency and budget reserve fund the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the Program for All Inclusive Care for the Elderly to expand to the neighbor islands.

The sum appropriated shall be expended by the Hawaii health systems corporation, department of health, in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 11. There is appropriated out of the emergency and budget reserve fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, for the operating costs of Molokai general hospital.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 12. There is appropriated out of the emergency and budget reserve fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to Kahuku hospital to fund the costs of emergency room operations, inpatient and outpatient care for the underinsured, medical malpractice insurance, and labor.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 13. There is appropriated out of the emergency and budget reserve fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, for emergency services at the Waianae Coast Comprehensive Health Center.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 14. There is appropriated out of the emergency and budget reserve fund the sum of \$250,000 or so much thereof as may be necessary for fiscal

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year 2004-2005 as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, for Wahiawa general hospital to provide indigent care services.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 15. There is appropriated out of the emergency and budget reserve fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to the St. Francis Medical Center for the operations of the bone marrow registry.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 16. There is appropriated out of the emergency and budget reserve fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005 to enable the department of health to operate a hospital-based poison center twenty-four hours a day.

The sum appropriated shall be expended by the department of health in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 17. There is appropriated out of the emergency and budget reserve fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a subsidy, pursuant to chapter 42F, Hawaii Revised Statutes, to the Hana Community Health Center for operational expenses.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 18. There is appropriated out of the emergency and budget reserve fund the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a subsidy, pursuant to chapter 42F, Hawaii Revised Statutes, to the Hana Community Health Center for behavioral health services for Hana high and elementary school; provided that no funds shall be made available unless matched dollar for dollar by the department of education.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 19. There is appropriated out of the emergency and budget reserve fund the sum of \$2,200,000 or so much thereof as may be necessary for fiscal year 2004-2005 to the department of health to provide resources to nonprofit, community-based healthcare providers to care for the uninsured. This appropriation shall pay for providing direct care, which includes primary medical, dental, and mental health care, and may pay for the purchase of prescription drugs. The department of health may distribute moneys on a per-visit basis, taking into consideration the need on all islands.

The sum appropriated shall be expended by the department of health in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 20. There is appropriated out of the emergency and budget reserve fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, for the Kapiolani Medical Center for Women and Children Sex Abuse Treatment Center master contract.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 21. There is appropriated out of the emergency and budget reserve fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, for Kauai Community Health Center.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 22. There is appropriated out of the emergency and budget reserve fund the sum of \$30,765 or so much thereof as may be necessary for fiscal year 2004-2005 for the donated dental services program in Hawaii.

The sum appropriated shall be expended by the department of health in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 23. There is appropriated out of the emergency and budget reserve fund the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Catholic Charities of the Diocese of Honolulu for the Lanakila Multi-Purpose Senior Center.

The sum appropriated shall be expended by the executive office on aging, department of health, for the purposes of this section.

SECTION 24. There is appropriated out of the emergency and budget reserve fund the sum of \$60,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Moiliili Community Center for program support.

The sum appropriated shall be expended by the executive office on aging, department of health, for the purposes of this section.

SECTION 25. There is appropriated out of the emergency and budget reserve fund the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Waikiki Community Center for program support.

The sum appropriated shall be expended by the executive office on aging, department of health, for the purposes of this section.

SECTION 26. There is appropriated out of the emergency and budget reserve fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Maui Economic Opportunity, Inc., and its night transportation service for dialysis treatment programs in Maui County.

The sum appropriated shall be expended by the office of community services, department of labor and industrial relations, for the purposes of this section.

SECTION 27. There is appropriated out of the emergency and budget reserve fund the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the Hawaii Drug Assistance Program.

The sum appropriated shall be expended by the department of health for the purposes of this section.

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SECTION 28. There is appropriated out of the emergency and budget reserve fund the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the Hawaii Seropositivity and Medical Management Program.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 29. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Family Support Services of West Hawaii for family centers in North Hawaii and in Kau on the island of Hawaii.

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 30. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Friends of Foster Kids to develop infrastructure to transition into a professional child welfare services agency.

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 31. There is appropriated out of the emergency and budget reserve fund the sum of \$80,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Na Lei Wili Area Health Education Center for the Grow Our Own Healers Youth Program and Health Corps Hawaii to address workforce shortage through tiered mentoring, health care exploration, community health education, and community service.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 32. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Roman Catholic Church in the State of Hawaii for the Mobile Care Health Project to provide primary dental care services for the uninsured and underinsured on the island of Hawaii.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 33. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Self-Help Housing Corporation of Hawaii for self-help housing technical services to assist low- and very low-income families to build and own their own homes.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii, department of human services, for the purposes of this section.

SECTION 34. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Parents and Children Together for programs on child development and parenting

skills and other programs that foster positive environments between parents and their children.

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 35. There is appropriated out of the emergency and budget reserve fund the sum of \$40,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Boys and Girls Club of Hawaii in Papakolea to continue its youth services program.

The sum appropriated shall be expended by the office of youth services, department of human services, for the purposes of this section.

SECTION 36. There is appropriated out of the emergency and budget reserve fund the sum of \$85,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to assist in the completion of the Teen Center at Nanakuli high and intermediate school.

The sum appropriated shall be expended by the office of youth services, department of human services, for the purposes of this section.

SECTION 37. There is appropriated out of the emergency and budget reserve fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 for continued enrichment and after-school programs at Nanaikapono elementary school.

The sum appropriated shall be expended by the department of education in accordance with chapter 103F, Hawaii Revised Statutes, for the purposes of this section.

SECTION 38. There is appropriated out of the emergency and budget reserve fund the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Honolulu Community Action Program in Waianae to support the Hawaii Family Advocacy Program in assisting families in the child protective services system.

The sum appropriated shall be expended by the office of community services, department of labor and industrial relations, for the purposes of this section.

SECTION 39. There is appropriated out of the emergency and budget reserve fund the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Weed and Seed Program to collaborate and support existing programs on the Waianae Coast.

The sum appropriated shall be expended by the office of community services, department of labor and industrial relations, for the purposes of this section.

SECTION 40. There is appropriated out of the emergency and budget reserve fund the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Honolulu Neighborhood Housing Services operating expenses for the purposes of developing low-income rental homes and rehabilitating homes for low-income families and individuals.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii, department of human services, for the purposes of this section.

SECTION 41. There is appropriated out of the emergency and budget reserve fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for Kokua Kalihi Valley Comprehensive Family Services, in collaboration with the Kalihi-Palama Health Center, to establish school-based or school-linked health services at the high school and middle schools in Kalihi.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 42. This Act shall take effect on July 1, 2004.

(Became law on May 3, 2004, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 46

H.B. NO. 1797

A Bill for an Act Relating to Optometry.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The profession of optometry has changed markedly in recent years. The American Optometric Association currently defines Doctors of Optometry as "independent health care providers who examine, diagnose, treat and manage diseases and disorders of the visual system, the eye, and associated structures as well as diagnose related systemic conditions." Schools and colleges of optometry in the United States utilize a standardized curriculum to produce graduates who are fully qualified to perform this scope of practice. However, the actual scope of optometric practice authorized by each state, including the degree to which optometrists may administer therapeutic pharmaceutical agents, varies considerably.

Currently, Hawaii ranks 47th among the states in the degree to which it allows optometrists to perform the full range of services that their education qualifies them to provide. This has profoundly limited the quality of eye care that optometrists in Hawaii have been able to provide to their patients.

The purpose of this Act is to bring the regulation of optometry in Hawaii into parity with most states, and thus provide greater access to quality eye care for the citizens of Hawaii.

SECTION 2. Section 459-1, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The practice of optometry, for the purpose of this chapter, is defined to be:

- (1) The examination, diagnosis, treatment, and management of diseases and disorders of the human visual system, the eye, and the eyelids;
- (2) The employment of trial frame or trial lenses, and any objective or subjective means or methods, other than the use of surgery, including refractive or therapeutic laser surgery, but including the use and prescription of ~~topically applied~~ pharmaceutical agents, as established by the board, and the performance of non-invasive diagnostic procedures or ordering of laboratory tests related to the use of ~~topically applied~~ pharmaceutical agents for the purpose of examining, diagnosing, treating, and managing visual, muscular, or other diseases and disorders of the human visual system, the eye, and the eyelids; or

(3) The prescribing, fitting, or adaptation of any ophthalmic lenses, contact lenses, prisms, frames, mountings, or orthoptic exercises for the correction or relief of the visual or muscular anomalies of the human eye.

Superficial foreign bodies may be removed from the human eye and eyelids, including the removal of corneal superficial foreign bodies above Bowman's Layer.

(b) Any person who engages in the prescribing of visual training, with or without the use of scientific instruments to train the visual system or other abnormal condition of the eyes, or claims to be able to do so, shall be deemed to be engaged in the practice of optometry and shall first secure and hold an unrevoked and unsuspended license as provided in this chapter; provided that an orthoptist may give visual training, including exercises, under the supervision of a physician or optometrist. The use and prescription of ~~[topically applied]~~ pharmaceutical agents and the removal of superficial foreign bodies from the human eye and eyelid shall be granted to an optometrist licensed under this chapter who has met the requirements under sections 459-7 and 459-7.4."

SECTION 3. Section 459-7.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The use and prescription of ~~[topical]~~ therapeutic pharmaceutical agents as established by the board for the treatment and management of conditions of the anterior segment of the human eye, eyelids, and lacrimal system, and the non-invasive surface removal of superficial foreign bodies from the anterior segment of the human eye and eyelids is authorized only for an optometrist licensed under this chapter who meets the requirements of a therapeutically certified optometrist as authorized in this section. [The] A therapeutically certified optometrist may use or prescribe steroidal agents. A therapeutically certified optometrist shall not [prescribe, dispense, or administer oral pharmaceutical agents except those available without prescription. Treatment of glaucoma, use of prescription anti-fungal, injectable, or oral agents, and performing] administer injectable agents except for anaphylaxis. Performing any invasive surgery shall not be allowed. Therapeutic pharmaceutical agents shall not include any of the controlled substances enumerated in sections 329-14, 329-16, 329-18, 329-20, and 329-22."

SECTION 4. Section 459-7.45, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2004.

(Vetoed by Governor and veto overridden by Legislature on April 30, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 47

S.B. NO. 3237

A Bill for an Act Relating to Prescription Drugs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding two new sections to part XIII to be appropriately designated and to read as follows:

“§346- Program goals. The legislature finds that affordability is critical in providing Hawaii residents with access to prescription drugs. This part is enacted by the legislature to enable the State to make prescription drugs more affordable for qualified Hawaii residents and thereby increase the overall health of Hawaii residents, promote healthy communities, and protect the public health and welfare. The legislature also intends that the program be integrated as much as possible with other state health programs. It is not the intention of the legislature that this law discourage employers from offering to pay, or from paying for prescription drug benefits for their employees, or that the law supplant employer-sponsored prescription drug benefits plans.

§346- Rx plus preferred drug list. (a) The department shall establish an Rx plus preferred drug list that includes but is not limited to:

- (1) Drugs listed on the State’s medicaid preferred drug list;
- (2) Antipsychotic drugs;
- (3) Antidepressant drugs;
- (4) Chemotherapy drugs;
- (5) Antiretroviral drugs;
- (6) Immunosuppressive drugs; and
- (7) Any other drugs listed on the Rx plus preferred drug list pursuant to this section.

(b) The pharmacy and therapeutic committee shall review and recommend drugs for placement on the Rx plus preferred drug list, striving to identify the safest and most efficacious drugs that are available at the lowest cost. The committee’s recommendations may take into consideration any of the following factors:

- (1) Therapeutic value for the disease or condition under treatment;
- (2) Clinical efficacy;
- (3) Safety;
- (4) Cost; and
- (5) Other relevant factors as determined by the committee.

(c) When considering categories of drugs designed to treat specialized chronic medical conditions and diseases, the committee shall consult with physicians and other health care professionals with specialized clinical knowledge and expertise in this area, either in their capacity as consultants serving on a subcommittee of the committee, or as physicians or pharmacists with a practice or specialty in chronic diseases.

(d) The determination of a drug’s safety and efficacy shall be consistent with the standards set forth in the peer-reviewed literature and other available sources, including but not limited to:

- (1) The American Hospital Formulary Service Drug Information;
- (2) The United States Pharmacopoeia Drug Information;
- (3) The DRUGDEX System; and
- (4) The American Medical Association Drug Evaluations.

(e) The determination of a drug’s net cost shall consider the pharmacy reimbursement amount authorized under section 346-317, as adjusted by manufacturer’s rebates to be paid to the department. The committee shall determine that a drug has no significant clinical or safety advantages over one or more alternative drugs when used for a given purpose before it may consider the drug’s net cost.”

SECTION 2. Section 346-311, Hawaii Revised Statutes, is amended as follows:

1. By adding six new definitions to be appropriately inserted and to read:

““Initial discounted price” as it pertains to a drug means the price that the department pays medicaid participating pharmacies to purchase the drug for its medicaid members.

“Participating pharmacy” or “retail pharmacy” means a retail pharmacy located in this State, or another business licensed to dispense prescription drugs in this State, that elects to participate in the program.

“Pharmacy and therapeutic committee” means the committee established by the department that advises the state medicaid director on the Rx plus preferred drug list and may be the same entity as the committee established in the medicaid program pursuant to section 346-14.

“Preferred drug” includes but is not limited to:

- (1) A drug listed on the State’s medicaid preferred drug list;
- (2) An antipsychotic drug;
- (3) An antidepressant drug;
- (4) A chemotherapy drug;
- (5) An antiretroviral drug;
- (6) An immunosuppressive drug; and
- (7) Any other drug listed on the Rx plus preferred drug list pursuant to this part.

“Qualified resident” means a resident of the State who:

- (1) Has a family income equal to or less than three hundred fifty per cent of the federal poverty level;
- (2) Lacks prescription drug coverage or has exceeded the extent of the resident’s prescription drug benefits; and
- (3) Is enrolled in the program.

“Secondary discounted price” as it pertains to a drug means the initial discounted price less any further discounts paid out of the Rx plus special fund.”

2. By amending the definition of “program” to read:

““Program” means the Rx plus program except as otherwise provided.”

SECTION 3. Section 346-312, Hawaii Revised Statutes, is amended to read as follows:

“[§346-312] Rx plus program. (a) There is established within the department, the Rx plus program. The program will combine the purchasing power of all [persons] qualified residents to enable the State to reduce prescription drug costs and improve the quality of health care for [those in the group.] qualified Hawaii residents in the program, thereby increasing the overall health of Hawaii residents, promoting healthy communities, and protecting the public health and welfare. The program shall be integrated into, and part of any statewide program for the uninsured.

(b) The program shall use manufacturer rebates and pharmacy discounts to reduce prescription drug prices.

(c) The department may administer the program or contract with a third party or third parties [in accordance with chapter 103F] to administer any single component, or combination of components of the program, including outreach, eligibility, claims, administration, rebate negotiations and recovery, and redistribution[-] to achieve the maximum possible discount for Hawaii residents. Any contract to administer any program component shall prohibit the contractor from receiving any compensation or other benefits from any manufacturer participating in the program.

(d) The department shall conduct ongoing quality assurance activities similar to those used in the medicaid program.”

SECTION 4. Section 346-313, Hawaii Revised Statutes, is amended to read as follows:

“[§346-313] Program eligibility. (a) All qualified residents of the State shall be eligible to participate in the Rx plus program.

(b) The department:

- (1) Shall establish procedures ~~[for determining]~~ to determine eligibility and shall issue program enrollment cards to eligible qualified residents;
- (2) Shall undertake outreach efforts to build public awareness of the program and maximize the enrollment of eligible qualified residents; and
- (3) May adjust the requirements and terms of the program by rule to accommodate any federally funded or authorized prescription drug program.”

SECTION 5. Section 346-314, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§346-314**~~]]~~ **Rebate agreement.** (a) ~~[Any prescription]~~ A drug manufacturer or labeler that sells prescription drugs in the State may enter into a rebate agreement with the department for ~~[the Rx access program.]~~ this purpose. The rebate agreement shall require the manufacturer or labeler to make rebate payments to the ~~[State]~~ department each calendar quarter or according to a schedule established by the department.

(b) The administrator shall negotiate the amount of the rebate required from a manufacturer~~[-]~~ or labeler in accordance with this part.

(c) The administrator shall take into consideration the rebate calculated under the medicaid rebate program pursuant to title 42 United States Code section 1396r-8, the average wholesale price of prescription drugs, and any other information on prescription drug prices and price discounts.

(d) The administrator shall use the administrator’s best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the medicaid program pursuant to title 42 United States Code section 1396r-8.

(e) With respect to rebates effective July 1, 2005, the administrator shall use the administrator’s best efforts to obtain a rebate amount equal to or greater than the amount of any discount, rebate, or price reduction for prescription drugs provided to the federal government.”

SECTION 6. Section 346-315, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§346-315**~~]]~~ ~~**Nonparticipating**~~ **Participating and nonparticipating manufacturers and labelers.** ~~[If the department and a drug manufacturer fail to reach agreement on the terms of a rebate, the department shall conduct a review of whether to place that manufacturer’s products on the prior authorization list or formularies for the state medicaid program in accordance with this chapter.]~~ (a) ~~The [department may release the] names of manufacturers that enter and do not enter into rebate agreements[-. This information]~~ pursuant to this part shall be deemed public information. The department shall release this information to health care providers and the public.

(b) ~~The department or administrator may also provide to [doctors, pharmacists, and other] health [professionals] care providers~~ information about the relative cost of drugs produced by manufacturers that enter into rebate agreements compared to the cost of drugs produced by those that do not enter into rebate agreements. The department shall adopt rules under chapter 91 creating procedures for the implementation of this section.”

SECTION 7. Section 346-316, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§346-316**~~]]~~ **Discounted retail prices for program participants.** (a) Each retail pharmacy participating in the Rx plus program shall ~~[discount the price~~

~~of] sell drugs [covered by the program and sold] to [program participants.] qualified residents at the lowered initial discounted price, in addition to the secondary discounted price as determined by the department pursuant to this part.~~

(b) The department shall establish secondary discounts for drugs covered by a rebate agreement and shall promote the use of ~~[reduced-cost]~~ safe, efficacious, and cost-effective drugs, taking into consideration:

- (1) Reduced prices for state and federally capped drug programs;
- (2) ~~[Dispensing]~~ Differential dispensing fees;
- (3) Administrative costs of the department; and
- (4) ~~[The average of all rebates provided pursuant to section 346-314, weighted by sales of drugs subject to those rebates over the most recent twelve-month period for which the information is available.]~~ The recommendation of the pharmacy and therapeutic committee.

~~[(e) In making a determination under this section, the administrator may rely on pricing information for a selected number of prescription drugs where the list of drugs selected is:~~

- (1) Representative of the prescription drug needs of the residents of the State; and
- (2) Made public.

~~(d) Beginning July 1, 2004, a participating pharmacy shall offer prescription drugs below the average wholesale price, plus a dispensing fee designated by the department. These initial price levels shall be calculated by the department and the dispensing fee shall not be less than that provided under the state medicaid program. The average wholesale price is the price on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally-recognized drug pricing file.]~~

~~(c) Beginning July 1, 2004, a participating pharmacy shall offer the initial discounted price.~~

~~[(e)] (d) No later than [January] July 1, 2005, a participating pharmacy shall offer [prescription drugs at or below the initial price levels specified in subsection (d), minus the amount of any discounts as calculated pursuant to subsections (b) and (c) to be paid by the State to the pharmacy.] the secondary discounted price, if available."~~

SECTION 8. Section 346-317, Hawaii Revised Statutes, is amended to read as follows:

~~“[§346-317]~~ **Pharmacy reimbursement.** (a) A pharmacy shall submit claims to the department to verify the amount charged to program participants. On a schedule to be determined by the department, the department shall reimburse each pharmacy for the discounts of prescription drugs provided to program participants.

(b) The department shall collect pharmacy use data necessary to calculate the amount of the manufacturer rebate under section 346-314. The department shall protect the confidentiality of information received as required under state or federal law, rule, or regulation.

(c) The department shall not impose transaction charges on participating pharmacies that submit claims or receive payments under the program."

SECTION 9. Section 346-318, Hawaii Revised Statutes, is amended to read as follows:

~~“[§346-318]~~ **Rx plus special fund.** (a) There is established within the state treasury, to be administered by the department, the Rx plus special fund into which shall be deposited:

- (1) All moneys received from manufacturers and labelers who pay rebates as provided in section 346-314;
 - (2) Appropriations made by the legislature to the fund; and
 - (3) Any other revenues designated for the fund.
- (b) Moneys in the Rx plus special fund shall be used for the following purposes:
- (1) Reimbursement payments to participating pharmacies for discounts provided to program participants;
 - (2) The cost of administering the Rx plus program, including salary and benefits of employees, computer costs^[1], and contracted services as provided in section 346-312; and
 - (3) Any other purpose deemed necessary by the department for the purpose of operating and administering the Rx plus program.

All interest on special fund balances shall accrue to the special fund. Upon dissolution of the Rx plus special fund, any unencumbered moneys in the fund shall lapse to the credit of the general fund.”

SECTION 10. Section 346-319, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§346-319**~~]]~~ **Annual report.** The department shall report the enrollment and financial status of the Rx plus program to the legislature no later than twenty days prior to the convening of each regular session, beginning with the 2005 regular session.”

SECTION 11. Chapter 346, Hawaii Revised Statutes, is amended by amending the title of part XIII to read as follows:

“~~[[~~PART XIII~~]]~~ Rx PLUS PROGRAM”

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2004-2005 to be paid into the Rx plus special fund created in section 346-318, Hawaii Revised Statutes.

SECTION 13. There is appropriated out of the Rx special fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2004-2005 to implement the Rx plus program established in section 346-312, Hawaii Revised Statutes.

The sum appropriated by this Act shall be expended by the department of human services for the purposes of the special fund.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 15. This Act shall take effect on July 1, 2004.

(Approved May 3, 2004.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 48

S.B. NO. 2443

A Bill for an Act Relating to Attorneys' Liens.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the alternative minimum tax was passed by Congress to ensure that individuals who have legitimate federal tax liabilities pay their fair share of federal taxes.

Some federal circuit courts of appeals have interpreted the alternative minimum tax to require that a person who receives a nonpersonal injury settlement (such as for nonphysical injury) must pay federal taxes on the full amount of an award or settlement, without receiving a deduction for the attorney's fees part of the award. Because attorneys also pay taxes on their portion of a court-awarded or contingency fee award, this results in double taxation on the award.

The Ninth Circuit Court of Appeals has ruled that if the court-ordered or contingent attorney's fees are considered to be property of the attorney, then such fees would not be subject to double taxation and therefore only the attorney—not the client—would have to pay income tax on the fees. The client still pays taxes on the amount the client receives after deducting the amount of attorney's fees. (See *Banaitis v. Commissioner of Internal Revenue*, 340 F.3d 1074 (9th Cir. 2003), ruling that under Oregon law, court-ordered or contingent attorney fees are considered property of the attorney and not subject to double taxation.)

The purpose of this Act is to enact an attorneys' lien statute modeled after the provisions in the Oregon statute relied upon by the *Banaitis* decision, to ensure that Hawaii residents who receive nonphysical injury settlements or awards are not subject to double federal taxation.

SECTION 2. Chapter 507, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§507- Attorney's lien upon actions and judgments. (a) An attorney has a lien upon:

- (1) Actions, suits, and proceedings after commencement of the action;
- (2) Judgments, decrees, orders, settlements, and awards entered by the court in favor of the client; and
- (3) Any proceeds paid in satisfaction of the judgment, decree, order, settlement, or award.

(b) The lien shall be for:

- (1) The fees and compensation specifically agreed upon with the client;
- (2) The reasonable value of the services of the attorney, if there is no fee agreement;
- (3) Any costs advanced by the attorney; and
- (4) Any fees or commissions taxed or allowed by the court.

(c) Except for tax liens, prior liens of record on the real and personal property subject to the lien created by this section, and as provided in section (d), the attorney's lien is superior to all other liens.

(d) When the attorney's lien attaches to a judgment, settlement, or decree allowing or enforcing a client's lien, the attorney's lien has the same priority as the client's lien with regard to personal or real property subject to the client's lien.

(e) The attorney's lien on a judgment, decree, order, settlement, or award remains valid as long as the judgment, decree, order, settlement, or award remains valid.

(f) To be enforceable under this section, a notice of claim of the attorney's lien shall be filed:

- (1) Before the complaint is dismissed by stipulation;
- (2) Before the complaint is dismissed by order of the court; or
- (3) Not later than one year after entry of final judgment is filed and disposition of any appeal thereof.

(g) Except as provided by subsections (i) and (j), the attorney's lien is not affected by a settlement between the parties to the action, suit, or proceeding before or after the judgment, decree, order, or award.

(h) Except as provided by subsections (i) and (j), a party to the action, suit, or proceeding or any other person shall not have the right to discharge or dismiss any judgment, decree, settlement, or award entered in the action, suit, or proceeding until the lien and claim of the attorney for fees based thereon is satisfied in full.

(i) A judgment debtor may pay the full amount of a judgment or decree into court, and the clerk of the court shall thereupon fully satisfy the judgment or decree on the record, and the judgment debtor shall be thereby released from any further claims thereunder.

(j) If more than one attorney from the same firm appears of record for a party, the satisfaction of the lien created by this section by one of the attorneys is conclusive evidence that the lien is fully satisfied.

(k) Attorneys have the same right and power over actions, suits, proceedings, judgments, decrees, orders, settlements, and awards to enforce their liens as their clients have for the amount due thereon to them."

SECTION 3. Section 605-8, Hawaii Revised Statutes, is amended to read as follows:

"§605-8 Practice in all courts; fees. The practitioners shall have the right to practice in all the courts of the State, and to appear therein as attorneys in behalf of persons who may choose to retain them, for the prosecution or defense of actions.

Attorney's fees or commissions taxed or allowed by the court shall be collected for the benefit of the attorney[-] as provided by section 507- ."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 4, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Crime.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- Habitual property crime. (1) A person commits the offense of habitual property crime if the person is a habitual property crime perpetrator and commits a misdemeanor offense within this chapter.

(2) For the purposes of this section, “habitual property crime perpetrator” means a person who, within five years of the instant offense, has convictions for:

- (a) Three felonies within this chapter;
- (b) Three misdemeanors within this chapter; or
- (c) Any combination of three felonies and misdemeanors within this chapter.

The convictions must have occurred on separate dates and be for separate incidents on separate dates.

(3) Habitual property crime is a class C felony.

(4) For a conviction under this section, the sentence shall be either:

- (a) An indeterminate term of imprisonment of five years; or
- (b) A term of probation of five years, with conditions to include but not be limited to one year of imprisonment.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved May 4, 2004.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 50

S.B. NO. 2294

A Bill for an Act Relating to Criminal Trespass.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that persons who enter and unlawfully reside in tents or other temporary shelters at public or private campgrounds, parks, beaches, and other areas, also known as “squatters,” commit simple trespass under section 708-815, Hawaii Revised Statutes (HRS). However, simple trespass is only a violation and does not constitute a crime as defined in section 701-107, HRS.

As “squatting” has become a significant problem, the legislature finds that there is a need to aid police officers in enforcing trespass laws by providing stronger penalties for squatters. Accordingly, the purpose of this Act is to make these persons, after a reasonable warning, subject to criminal trespass in the second degree, a petty misdemeanor.

SECTION 2. Section 708-814, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of criminal trespass in the second degree if:

- (a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced; or

- (b) The person enters or remains unlawfully in or upon commercial premises or public property after a reasonable warning or request to leave by the owner or lessee of the commercial premises or public property, [or] the owner's or lessee's authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.

For purposes of this [section,] paragraph, "reasonable warning or request" means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

- (i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to section 708-814(1)(b), and that criminal trespass in the second degree is a petty misdemeanor;
- (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description[;] including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics[;] of the person warned;
- (iii) The name of the person giving the warning along with the date and time the warning was given; and
- (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 4, 2004.)

ACT 51

S.B. NO. 3238

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

PART I PURPOSE

SECTION 1.¹ Although many responsibilities are laid upon education, ultimately education must do no less than advance the endowment of human culture itself, so that each succeeding generation finds itself further along the road towards peace, social justice, and environmental sustainability in a society guided by creativity, compassion, and curiosity. This Act is a road map for a critical phase in that ongoing journey.

The legislature finds that significant changes need to be made to enhance Hawaii's public education system to ensure the success of that journey. Although the State's students, parents, teachers, school administrators, departmental staff, and other educational stakeholders strive to achieve excellence, their efforts will never be completely successful until various aspects of the system around them are improved.

The legislature has supported and will continue to support efforts by the department of education to improve Hawaii's schools as a means of enhancing the academic achievement, safety and well being, and civic commitment of students, to meet the evolving needs of today's communities.

The coordinated package of initiatives in this Act aims to implement comprehensive education reform in Hawaii's public schools and shall be known as the "Reinventing Education Act of 2004." Its main elements include:

- (1) Establishing a weighted student formula;
- (2) Providing additional information technology;
- (3) Empowering principals through a Hawaii principals academy and other means;
- (4) Strengthening community involvement through school community councils and parent-community networking centers;
- (5) Providing more mathematics textbooks;
- (6) Lowering class size in kindergarten, grade one, and grade two;
- (7) Providing full-time, year-round, high school student activity coordinators;
- (8) Providing support for students who need additional help to succeed in school;
- (9) Establishing a national board certification incentive program for teachers;
- (10) Enhancing teacher education;
- (11) Reducing the bureaucracy that hampers the effectiveness of the department of education;
- (12) Improving the educational accountability system; and
- (13) Requiring the board of education members to hold community meetings in their districts.

Research shows that student performance is significantly higher in smaller schools. While establishing smaller schools throughout the State is not financially feasible, some schools have taken it upon themselves to create smaller and more manageable learning communities within their schools. Research also strongly supports the need for early childhood education and the establishment of a coherent system that spans all levels of education. The department of education teamed with the University of Hawaii and Good Beginnings Alliance to create a vision for such a system, which was presented in 2002, and is now being implemented.

Despite these efforts, more needs to be done. Currently, public school principals are faced with a nearly impossible task, as they are asked to attend to every detail of operating their schools without enough institutional support or discretion to expend funds. While some support and additional school leadership is provided by the school/community-based management (SCBM) system at many schools throughout the State, SCBM plays a far more limited role at some locations, and has not been implemented at all at others.

Recently, departmental leadership was decentralized through the creation of the complex area system, including the hiring of complex area superintendents. While replacing the old district system with this new structure was an important first step, further changes need to be made to allow meaningful authority to exist as close to the schools as possible. The complex area structure will serve as an excellent base upon which to build these continued reforms. It is the legislature's intent to place a

far greater number of decisions, and a much higher percentage of moneys, directly in the hands of individual schools and their leaders.

Another area of improvement necessary to promote excellence in learning is the method by which moneys are allocated to individual schools. Hawaii currently receives high marks nationally for funding equity, as being organized as a single unified system enables the State to fairly disburse moneys to schools. In other states, local revenue sources such as property taxes account for a significant portion of school and district funding, resulting in massive financial disparities between schools in more and less affluent areas.

Although the State avoids this particular pitfall, further improvements can be made to ensure that moneys go to the schools that truly have the greatest need, and to place more moneys at the discretion of individual schools. While the current funding system takes into account certain criteria when allocating moneys to schools, it does not comprehensively address the fact that some students are more costly to educate than others. For example, students with special needs, such as those with limited proficiency in English, or who have physical, psychological, or other impediments to learning, are more expensive to teach than students who are not faced with these barriers.

One method that can be used to address these funding issues is a weighted student formula. Under such a system, moneys are allocated to schools based on a system of weighted characteristics that apply to every student in the public schools.

Under a weighted student formula there are several advantages. Among other things:

- (1) The relative cost of educating students can be much more accurately assessed, based upon the unique learning needs of each student;
- (2) Funds follow students to whichever school they attend; and
- (3) The budget process becomes more transparent as it is based on dollars, not staff positions.

However, establishing a weighted student formula cannot be effective in a vacuum. Other reform measures must be implemented as well. Principals will be empowered to act as the educational leaders of their schools, with more authority relating to budgeting, and more flexibility to expend funds. With these expanded powers, principals will be held accountable for their performance through a system that includes rewards, assistance, and sanctions. Principals will also need more training and support if they are required to take on additional duties, and are expected to advance student success. Furthermore, community involvement and support of schools will need to be enhanced if schools are to work effectively.

The department of education is also faced with significant impediments that will likely reduce its ability to effectively implement the weighted student formula. With educational responsibilities spread throughout numerous state agencies, there are various roadblocks to progress that could prevent the department of education and individual schools from successfully performing their duties and effectively using a new funding system.

The legislature finds that a comprehensive effort addressing all of these issues is required for Hawaii's public schools to maximize student achievement. Accordingly, the purpose of this Act is to enhance educational outcomes in Hawaii's public schools by:

- (1) Implementing the weighted student formula by:
 - (A) Requiring the department of education to provide supplementary allocations to those schools whose budgets are adversely affected by the weighted student formula for no more than three years beginning with the 2006-2007 school year;
 - (B) Establishing a committee on weights within the department of education to determine the unit value of student weights and

- recommend a weighted student formula to the board of education at least annually, and appropriating \$10,000 to support the operation of the committee;
- (C) Requiring the department of education to adopt a weighted student formula in allocating funds to all public schools, excluding new century charter schools and new century conversion charter schools;
- (2) Appropriating \$2,000,000 to the department of education to facilitate field support, security and privacy for the telecommunications network, and training regarding information technology infrastructure used to enhance accountability, compliance with the federal No Child Left Behind Act of 2001, and implementation of school reform including the weighted student formula;
- (3) Supporting and empowering principals by:
 - (A) Requiring the department of education, with the invited participation of the exclusive bargaining agent of educational officers of the department of education, to propose salary schedules and other terms and conditions of employment of principals and vice principals based upon a twelve-month term of service, and report findings back to the Legislature no later than twenty days prior to the regular session of 2005;
 - (B) Requiring the board of education to classify all educational officer positions of the department of education to adopt two separate classification/compensation plans for educational officers, one for principals and vice principals (based on the general pattern of a school administrator's career development and associated school administrator's qualification requirements) and one for all other educational officers (reflective of the career development pattern and qualification requirements for the respective professional field of expertise), and including classification appeals procedures for both; and
 - (C) Convening a working group to create a plan for the implementation of performance contracts for principals;
 - (D) Establishing a Hawaii principals academy to support and train complex area superintendents, principals, and prospective principals, and appropriating \$500,000 to operate the academy;
 - (E) Clarifying the authority and responsibility of principals;
 - (F) Appropriating \$183,780 to operate the department of education's administrator certification for excellence (ACE) program; and
 - (G) Appropriating \$400,000 to compensate principals recalled to work by the department, outside of their regular term of service, for professional development and any other activities that may enhance their effectiveness as leaders of their schools;
- (4) Enhancing community involvement in schools by:
 - (A) Appropriating \$350,000 for training and other activities needed to facilitate the transition from the current SCBM system into a mandatory school community council system to be implemented at each public school, excluding new century charter schools and new century conversion charter schools;
 - (B) Clearly articulating the balance and reciprocity of powers and responsibilities between the principal and school community council;

- (C) Appropriating \$1,743,900 to support and enhance a proven means of improving parental and community involvement in schools, parent-community networking centers;
- (5) Directly, concretely supporting the academic achievement and holistic development of students by:
 - (A) Appropriating \$2,500,000 for mathematics textbooks and other mathematics learning materials in schools, provided that mathematics curriculum is aligned within the school complex;
 - (B) Appropriating \$2,143,350 to reduce class size in kindergarten, grade one, and grade two by hiring seventy-five elementary school teachers;
 - (C) Appropriating \$460,000 for full-time, year-round, high school student activity coordinators; and
 - (D) Appropriating \$100,000 for programs that support parents in working with students who need additional help to succeed in school provided the programs have measurable outcomes;
- (6) Directly, concretely supporting teachers by:
 - (A) Establishing a national board certification incentive program to be administered by the Hawaii teacher standards board to continue comparable efforts initiated under a memorandum of understanding between the department of education and Hawaii teacher standards board which expires on June 30, 2005, and appropriating \$480,000 funding to execute the memorandum of understanding during fiscal year 2004-2005;
 - (B) Appropriating \$92,000 for the administration of the Hawaii teacher standards board;
 - (C) Increasing the pool of qualified teachers and administrators by appropriating \$500,000 to fund seven teacher education positions and one education administration faculty position at the college of education of the University of Hawaii;
- (7) Reducing bureaucracy that hampers the effectiveness of the department of education by:
 - (A) Requiring the department of education to convene an interagency working group to address systemic impediments to the efficient management and operation of schools;
 - (B) Transferring certain key functions from various state agencies to the department of education;
 - (C) Requiring the board of education to adopt a single school calendar for all public schools to apply beginning with the 2006-2007 school year;
- (8) Enhancing educational accountability by:
 - (A) Requiring academic achievement, safety and well being, and civic responsibility of individual students to be assessed and tracked;
 - (B) Expanding the accountability provision to include fiscal accountability;
 - (C) Including complex area superintendents and principals in the accountability system;
 - (D) Requiring clear, easily understandable report cards on key performance indicators for schools, school complexes, and the public school system;
 - (E) Requiring the board of education to hold community meetings in each school district;

- (9) Appropriating \$400,000 for the piloting of school community councils and development of academic and financial plans at selected schools prior to the statewide implementation of the weighted student formula; and
- (10) Requiring the department of education to submit findings and recommendations to the legislature prior to the 2005 regular session relating to the implementation of this Act.

PART II WEIGHTED STUDENT FORMULA

SECTION 2. The department of education, from within appropriations provided to the department of education, shall provide supplementary allocations to those schools whose budgets are adversely affected upon the implementation of the weighted student formula, as determined by the superintendent, for no more than three years beginning with the 2006-2007 school year.

SECTION 3. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Committee on weights. (a) There is established within the department of education the committee on weights to develop a weighted student formula pursuant to section 302A-. . The committee shall:

- (1) Create a list of student characteristics that will be weighted;
- (2) Create a system of weights based upon the student characteristics that may be applied to determine the relative cost of educating any student;
- (3) Determine specific student weights, including their unit value;
- (4) Determine which moneys shall be included in the amount of funds to be allocated through the weighted student formula;
- (5) Recommend a weighted student formula to the board of education;
- (6) Perform any other function that may facilitate the implementation of the weighted student formula; and
- (7) Meet not less than annually to review the weighted student formula and, if the committee deems it necessary, recommend a new weighted student formula for adoption by the board of education.

(b) The composition of the committee on weights shall be determined by the board of education based on recommendations from the superintendent of education and dean of the University of Hawaii at Manoa college of education and include principals, teachers, and other members with the appropriate professional skills, experiences, and qualifications needed to facilitate the work of the committee. The superintendent or the superintendent’s designee shall chair the committee on weights.

(c) The committee on weights may form advisory subcommittees to obtain input from key stakeholders as determined necessary by the committee.

(d) The members of the committee on weights shall serve at the pleasure of the board of education and shall not be subject to section 26-34. Members of the committee on weights shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.”

SECTION 4.¹ Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Weighted student formula. Based upon recommendations from the committee on weights, the board of education, not less than annually, shall

adopt a weighted student formula for the allocation of moneys to public schools, excluding new century charter schools and new century conversion charter schools, which takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools, excluding new century charter schools and new century conversion charter schools. Principals shall expend moneys provided to the principals' schools."

SECTION 5. Section 302A-101, Hawaii Revised Statutes, is amended by amending the definition of "public schools" to read as follows:

"Public schools" means all academic and noncollege type schools either established and maintained by the department, or issued a charter by the board of education, in accordance with law. All other academic and noncollege type schools are "private schools", irrespective of the hours during which the sessions take place."

SECTION 6.¹ Section 302A², Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Weighted student formula" means a formula for allocating operating moneys to individual public schools that includes a system of weighted characteristics affecting the relative cost of educating each student attending a public school, excluding new century charter schools and new century conversion charter schools."

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000, or so much thereof as may be necessary for fiscal year 2004-2005, to support the operations of the committee on weights.

SECTION 8. The sum appropriated shall be expended by the department of education for the purposes of this part.

PART III INFORMATION TECHNOLOGY

SECTION 9. The department of education uses technology to support instructional, student information, fiscal, human resources, and outcome-based research systems. To meet the information needs of the principals, teachers, and the school community councils as they develop academic and fiscal plans for individual schools, the requirements of the No Child Left Behind Act, and the Felix consent decree, the department must improve its administrative support information systems.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 2004-2005, for:

- (1) Positions to provide technical support to school level information systems uses;
- (2) Infrastructure to meet the security and privacy requirements of the telecommunications network;
- (3) Customization of the student information system software; and
- (4) Training regarding the use of information technology.

SECTION 11. The sum appropriated shall be expended by the department of education for the purposes of this part.

PART IV PRINCIPALS

SECTION 12. The department of education, with the invited participation of the exclusive bargaining agent of educational officers of the department of education, shall propose salary schedules and other terms and conditions of employment of principals and vice principals based upon a twelve-month term of service. The department of education shall submit their findings to the legislature no later than twenty days prior to the convening of the regular session of 2005.

SECTION 13. Section 302A-619, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§302A-619]]~~ **Classification, educational officers.** The board shall classify all educational officer positions of the department and shall adopt [a] two separate classification/compensation [plan] plans for [these] educational [officer positions;] officers. One classification/compensation plan shall be for principals and vice principals and shall be based on the general pattern of a school administrator's career development and associated school administrator's qualification requirements. A separate classification/compensation plan shall be for all other educational officers and shall be reflective of the career development pattern and qualification requirements for the respective professional field of expertise; provided that [the] both classification/compensation [plan] plans shall include [a] classification appeals [procedure;] procedures.”

SECTION 14.¹ The superintendent of education shall select and convene a working group to create a plan for performance contracts for principals to be implemented beginning with the 2006-2007 school year. The working group shall include:

- (1) The superintendent of education;
- (2) Representatives of complex area superintendents;
- (3) Representatives of school principals; and
- (4) Representatives of any other agency, organization, or group as deemed appropriate by the superintendent of education.

The superintendent shall request the exclusive representative for collective bargaining unit 6 to participate in the working group.

The working group shall:

- (1) Establish appropriate performance criteria for which principals are to be evaluated under performance contracts, including:
 - (A) Core criteria to be incorporated into performance contracts state-wide; and
 - (B) Criteria that may be used at the discretion of individual schools;
- (2) Determine appropriate performance benchmarks, or methods of devising performance benchmarks, that may be used to assess principal performance relative to expected standards, provided that such performance benchmarks, at a minimum, shall include those elements related to principals in the educational accountability system;
- (3) Determine appropriate rewards, assistance, and sanctions to be included or considered for inclusion in performance contracts; and
- (4) Address any other issues necessary for the implementation of performance contracts.

The department of education shall submit findings, including proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2005.

SECTION 15. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Hawaii principals academy. There is established within the department the Hawaii principals academy. The academy shall support and train department complex area superintendents, principals, and prospective principals in areas including but not limited to:

- (1) Becoming better leaders;
- (2) Improving students’ academic achievement, safety and well being, and civic responsibility;
- (3) Collaborating with the school community councils;
- (4) Developing curriculum alignment;
- (5) Managing school budgets; and
- (6) Establishing partnerships with the private sector.”

SECTION 16.¹ Section 302A-1103, Hawaii Revised Statutes, is amended to read as follows:

“[[§302A-1103]] Principal; authority and responsibility. The role of the principal shall include but not be limited to overseeing the day-to-day management of the school, the primary function of which is to develop and deliver instructional services to students in accordance with statewide educational policy and standards. The principal shall ~~[ensure]~~:

- (1) ~~Ensure~~ that the curriculum facilitates the achievement of the statewide student performance standards adopted for the public school system~~[-];~~
- (2) ~~Maintain and exercise authority over the implementation of the budget, policies, and operations of the school; and~~
- (3) ~~Collaborate with other principals in the principal’s school complex to ensure that:~~
 - (A) ~~Logical, sequential curricula are adopted within the school complex;~~
 - (B) ~~Best practices are shared among and implemented by schools within the school complex;~~
 - (C) ~~The goals and objectives of the school complex are being met;~~
 - (D) ~~The use of school complex-based personnel and contractors who divide their time between more than one school in a school complex is coordinated to maximize efficiency; and~~
 - (E) ~~The passage of students through the continuum of grades is coordinated in a manner consistent with section 302A-1004.”~~

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,083,780, or so much thereof as may be necessary for fiscal year 2004-2005, to be expended as follows:

- (1) \$500,000 to establish and operate the Hawaii principals academy;
- (2) \$183,780 for the operation of the administrator certification for excellence (ACE) program; and
- (3) \$400,000 to compensate principals who are recalled to work by the department, outside of their regular term of service, for professional development and any other activities that may enhance their effectiveness as leaders of their schools.

SECTION 18. The sum appropriated shall be expended by the department of education for the purposes of this part.

PART V COMMUNITY INVOLVEMENT

SECTION 19. One of the most important means of improving educational outcomes and public confidence in those outcomes in schools is by enhancing community involvement. This part seeks to accomplish this by:

- (1) Establishing school community councils for each public school, excluding new century charter schools and new century conversion charter schools, to provide a mechanism whereby parents, the community, and other key stakeholders can have a substantially increased voice in the affairs of their local schools, with a clear and concrete enunciation of powers and responsibilities, and how these are shared with those of the principal; and
- (2) Supporting and enhancing parent-community networking centers, a mechanism for improving community and parental involvement with a proven track record of success.

The legislature finds that there is also overwhelming research evidence of the critical need for an integrated comprehensive system of family support, parent education, teacher-parent partnerships, and volunteer and resource development.

Parent-community networking centers serve to create supportive partnerships among the home, school, and community for the purposes of improving student achievement and building a sense of family among all.

The purpose of this part is to:

- (1) Establish school community councils at each school, excluding new century charter schools and new century conversion charter schools; and
- (2) Appropriate funding for:
 - (A) Facilitating the transition from school/community-based management to school community councils by training and other necessary activities; and
 - (B) Parent-community networking centers for:
 - (i) Supplies, equipment, and telephones; and
 - (ii) A minimum of one part-time parent facilitator in each school.

SECTION 20. School/community-based management councils shall prepare for the transition to school community councils pursuant to this section in the 2005-2006 school year. All policies or bylaws adopted, and all decisions made, by a school/community-based management council shall remain in effect until repealed or revised by members of the new school community council. The department of education shall ensure that schools not participating in the school/community-based management system are prepared for the implementation of school community councils in the 2005-2006 school year.

SECTION 21. Section 89-10.6, Hawaii Revised Statutes, is amended to read as follows:

“§89-10.6 [School/community-based management waiver.] Schools; waiver of policies, rules, or procedures. [A] Any school [or a learning support center participating in the school/community-based management program] may initiate a waiver from policies, rules, or procedures, including collective bargaining agreements, as provided for in section 302A-1126.”

SECTION 22. Section 302A-101, Hawaii Revised Statutes, is amended by deleting the definition of "school/community-based management system".

~~[""School/community-based management system" means a method of educational management that diffuses educational decisionmaking to involve or secure the input of those persons directly affected by the decision to be made at the school level, and encourages school-initiated methods for achieving educational goals established statewide by the board.""]~~

SECTION 23. Section 302A-202, Hawaii Revised Statutes, is repealed.

SECTION 24. Section 302A-601, Hawaii Revised Statutes, is repealed.

SECTION 25.¹ Section 302A-1124, Hawaii Revised Statutes, is amended to read as follows:

~~["[§302A-1124] Mandate to initiate [school/community-based management system.] school community councils. (a) The department, through the board and its superintendent, shall [formulate policies, including criteria and procedures to determine which schools and learning support centers shall participate in the system, to initiate a school/community-based management system in the public schools.] establish a school community council system under which each public school, excluding new century charter schools and new century conversion charter schools, shall create and maintain a school community council. Each school community council shall:~~

- ~~(1) Participate in the development of, and recommend for approval by the complex area superintendent, the school's annual:~~
 - ~~(A) Academic plan; and~~
 - ~~(B) Financial plan;~~
- ~~(2) Ensure that the school's academic and financial plans are aligned with the educational accountability system under section 302A-1004;~~
- ~~(3) Participate in principal selection and evaluation, and transmit any such evaluations to the complex area superintendent;~~
- ~~(4) Provide collaborative opportunities for input and consultation.~~
- ~~(b) School community councils shall be exempt from the requirements of chapters 91 and 92. The school community councils shall:~~
 - ~~(1) Make available the notices and agendas of public meetings:~~
 - ~~(A) At a publicly accessible area in the school's administrative office so as to be available for review during regular business hours; and~~
 - ~~(B) On the school's Internet web site, not less than six calendar days prior to the public meeting, unless a waiver is granted by the superintendent in the case of an emergency; and~~
 - ~~(2) Make available the minutes from public meetings on a timely basis in:~~
 - ~~(A) The school's administrative office so as to be available for review during regular business hours; and~~
 - ~~(B) On the school's Internet web site.~~
- ~~(c) Complex area superintendents may require a school community council to revise its school academic and financial plans if the plans are in violation of law or conflict with statewide educational policies and standards.~~
- ~~(d) The superintendent of education may recommend to the board of education dissolution of a school community council and establish an interim school community council if the school community council engages in any act or omission that would constitute gross negligence, wilful and wanton misconduct, or intentional~~

misconduct. The superintendent may recommend to the board the removal of any member of a school community council. The superintendent shall appoint or facilitate the creation of an interim school community council at any school that has not established a council or has had its council dissolved. In appointing or facilitating the creation of an interim school community council at any school that has had its council dissolved, the superintendent may appoint individuals who were previously members of the council.

(e) Unless otherwise specified, each school community council shall establish policies governing the council's composition, election, staggered terms of office for members, operation, and vacancies; provided that:

- (1) The number of school personnel in any school community council shall be equal to the number of primary stakeholders on the school community council;
- (2) At the elementary and middle school levels, each school community council shall be composed of the principal and at least one member representing each of the following groups:
 - (A) Parents elected by ballots distributed among and collected from the parents of the school's students;
 - (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from parents of the school's students; and
 - (E) Student representatives selected by the student council of the school; and
- (3) At the high school level, each school community council shall be composed of the principal and at least one member representing each of the following groups:
 - (A) Parents elected by ballots distributed among and collected from parents of the school's students;
 - (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from the parents of the school's students; and
 - (E) Student representatives selected by the student council of the school.

For the purposes of this subsection, "primary stakeholders" means students, parents, and community members.

(f) School community councils shall elect officers, including:

- (1) A chairperson;
- (2) A vice-chairperson;
- (3) A secretary; and
- (4) Other officers as needed to perform stated duties in support of the work of the council.

(g) The principal shall have the authority to set aside any decision made by the school community council if the principal determines it to be in the best interest of the school, provided that the principal notifies the school community council. If the school community council opposes a decision of the principal, an appeal shall first be brought to the complex area superintendent for resolution and, if necessary,

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to the superintendent and, finally, to the board of education. The principal shall not set aside decisions made by the school community council to recommend annual academic and financial plans for approval by the complex area superintendent.

(h) Complex area superintendents shall assist the school community councils and principals within their respective complex areas in:

- (1) Obtaining the support and services of the department; and
- (2) Ensuring the progress and success of the school's academic and financial plan."

SECTION 26. Section 302A-1126, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~302A-1126~~(h)~~] Waiver of policy, rule, or procedures. Any state agency that may be required to act under state law on a matter affecting an individual school~~;~~ or its school community, ~~[or a learning support center]~~ shall waive otherwise applicable policies, rules, or procedures when requested to do so by a ~~[school or a learning support center participating in the school/community-based management system]~~ school community council unless the agency, within thirty days, can justify a denial to the appropriate authority. The board shall adopt procedures necessary to process waivers initiated by ~~[schools or learning support centers subject to the school/community-based management system.]~~ a school community council. Any general waiver of policy, rule, or procedures granted by the board to a specific school or schools may be extended by the board to apply to other schools under comparable circumstances. This section shall apply to collective bargaining agreements as provided for in all relevant collective bargaining agreements negotiated pursuant to chapter 89."

SECTION 27. Section 302A-1306, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 302A-1307, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 302A-1309, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 302A-1505, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Prior to meeting with the department ~~[of accounting and general services]~~ to advise it of a school's repair and maintenance needs, the school's principal and the business and fiscal officer shall consider the recommendations made by the ~~[school/community-based management council, if there is such a council at the school;]~~ school community council or the local school board, if the school is ~~[a new century charter school or]~~ a new century conversion charter school. ~~[If there is no school/community-based management council or local school board, then the school's principal shall appoint a standing committee composed of a teacher, a member of the support staff, a parent, a student, and a community member.]"~~

SECTION 31. Section 302A-1507, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~302A-1507~~(h)~~] Classroom cleaning project; established. (a) There is established a classroom cleaning project in all public schools ~~[designated to participate in school/community-based management.]~~ excluding new century charter schools and new century conversion charter schools. Each ~~[school/community-based management]~~ school, through its school community council, may develop mecha-

nisms to provide for classroom cleaning, including but not limited to having parent, student, or other community groups clean the classrooms on a regular, continuing basis.

(b) ~~[School/community-based management schools]~~ Schools may use any available resources to achieve the purposes of this section; provided that no full-time custodial staff ~~[currently]~~ employed at the school shall be displaced.”

SECTION 32. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,093,900, or so much thereof as may be necessary for fiscal year 2004-2005, to be expended as follows:

- (1) \$350,000 for training and other activities needed to facilitate the transition from school/community-based management councils to school community councils; and
- (2) \$1,743,900 for parent-community networking centers including:
 - (A) \$483,000 for supplies, equipment, and telephones; and
 - (B) \$1,260,900 for a minimum of one part-time parent facilitator in each school.

SECTION 33. The sum appropriated shall be expended by the department of education for the purposes of this part.

PART VI STUDENTS

SECTION 34. Ultimately all education reform must be driven by the needs of students. Students are the primary clients served by the public education system and they must be served well by providing them with access to the tools they need to succeed, a nurturing environment conducive to learning, and supplementary opportunities for growth that facilitate their development.

The legislature finds that much of an individual’s cognitive, emotional, and social development takes place in their earliest years of life. To a significant extent, opportunities during this age set the parameters for an individual’s development throughout the rest of the individual’s life. The legislature further finds that grade three is a pivotal year in preparation for the No Child Left Behind Act’s assessment plans. For this reason, children in the preceding grades should be provided with the instructional support needed to ensure superior performance in assessment instruments mandated by the No Child Left Behind Act.

For these reasons, the Legislature finds that a class size of not more than twenty-five students per teacher to be advisable in kindergarten, grade one, and grade two classrooms.

The purpose of this part is to appropriate funding to:

- (1) Provide mathematics textbooks and other mathematics learning materials;
- (2) Reduce class size in kindergarten, grade one, and grade two;
- (3) Provide for full-time, year-round, high school student activity coordinators; and
- (4) Programs that support parents in working with students who need additional help to succeed in school provided the programs have measurable outcomes.

SECTION 35. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,203,350, or so much thereof as may be necessary for the fiscal year 2004-2005, to be expended as follows:

- (1) \$2,500,000 to purchase mathematics textbooks and other mathematics learning materials for schools; provided that the mathematics curriculum within a school complex shall be aligned;
- (2) \$2,143,350 to reduce class size in kindergarten, grade one, and grade two in public schools, excluding new century charter schools and new century conversion charter schools, by hiring seventy-five full time equivalent (75.00 FTE) regular elementary teachers for kindergarten, grade one, and grade two;
- (3) \$460,000 for full-time, year-round, high school student activities coordinators in all public high schools; and
- (4) \$100,000 for programs that support parents in working with students who need additional help to succeed in school provided the programs have measurable outcomes.

SECTION 36. The sum appropriated shall be expended by the department of education for the purposes of this part.

PART VII TEACHERS

SECTION 37. The National Commission on Teaching and America's Future, a national organization with twenty partner states, including Hawaii, is focused on improving student learning by ensuring that there is a caring, competent, and qualified teacher in every classroom.

The Hawaii policy group of the National Commission on Teaching and America's Future, composed of a representative group of educational stakeholders, completed an inventory of state policies relating to teacher quality and, based on this inventory, made recommendations for improving teaching in Hawaii.

Other than home and societal factors, teacher quality was determined to be the single most influential factor in student achievement. National board certification prompts candidates to analyze their practice in very profound ways. It is, therefore, important to continue to identify, support, recognize, and reward public school teachers who voluntarily undergo the national board certification process.

National board certification requires a tremendous commitment of time and professional risk-taking. The application fee represents a large financial investment. To be successful, certification candidates need a strong support program, access to the program and testing facilities, and release days to organize and prepare the documents and portfolio required for submittal.

The legislature finds that, in addition to supporting and recognizing highly accomplished teaching, the overall pool of qualified teachers in the State of Hawaii should be expanded. Currently the University of Hawaii lacks the stable, ongoing resource base needed to fund college of education faculty positions necessary to produce enough teachers for Hawaii's public schools.

While the department of education hires over one thousand three hundred new teachers each year, the college of education of the University of Hawaii at Manoa and the education department of the University of Hawaii at Hilo are only able to prepare four hundred to four hundred fifty teachers each year.

Furthermore, the legislature also finds that there is a shortage of school principals, necessitating additional faculty in the area of educational administration.

The purpose of this part is to:

- (1) Establish a national board certification incentive program to be administered by the Hawaii teacher standards board to continue comparable efforts initiated under a memorandum of understanding between the department of education and Hawaii teacher standards board which

- expires on June 30, 2005, and appropriate funding to execute the memorandum of understanding during fiscal year 2004-2005;
- (2) Appropriate funding to the Hawaii teacher standards board to provide training and support for national board certification applicants; and
- (3) Appropriate funding for eight faculty positions at the college of education of the University of Hawaii.

SECTION 38. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Teacher national board certification incentive program. (a) There is established within the department the teacher national board certification incentive program to recognize and support exemplary teaching practice by supporting public school teachers who have achieved national board certification under the certification program of the National Board for Professional Teaching Standards. The teacher national board certification incentive program shall provide:

- (1) A \$5,000 bonus per year for each public school teacher who maintains current national board certification;
- (2) \$1,500 upon completing the certification program of the National Board for Professional Teaching Standards; and
- (3) A reimbursement of the remainder of the national board certification application fee upon achievement of national board certification.

(b) The incentive program shall include a mentoring component that encourages and enables national board-certified teachers to assist other teachers and share their teaching expertise.”

SECTION 39. There is appropriated out of the general revenues of the State of Hawaii the sum of \$572,000, or so much thereof as may be necessary for fiscal year 2004-2005, to be expended as follows:

- (1) \$480,000 to provide salary differentials and reimbursements for national board certification candidate support to public school teachers, including those of new century charter schools and new century conversion charter schools; and
- (2) \$92,000 for training, assistance, conducting candidate recognition initiatives, and operational expenses, including the establishment of a temporary position, associated with national board certification candidate support by the Hawaii teacher standards board.

The sum appropriated shall be expended by the department of education for the purposes of this part.

SECTION 40. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2004-2005, for seven full-time equivalent (7.00 FTE) teacher education positions and one full-time equivalent (1.00 FTE) educational administration position.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this part.

PART VIII REDUCTION OF BUREAUCRACY

SECTION 41. A wide variety of state agencies perform many services for the department of education. In some cases this is an efficient, cost-effective means of organizing state government. The legislature finds that in other cases, however, this system hampers the efficiency of the State’s public educational system. The services

provided to the department of education by the department of accounting and general services, department of budget and finance, department of human resources development, department of the attorney general, and department of human services need to be scrutinized to reduce bureaucracy and improve the responsiveness and service delivery of the department of education. Such a reorganization is an integral part of a comprehensive, multi-faceted education improvement initiative. However, it is also clearly a significant reorganization of state government and must be taken with prudent precaution at each step. For that reason, each phase in the reduction of bureaucracy, with targeted transfer dates of certain key rights, powers, functions, duties, and resources from various state agencies to the department of education, is subject to repeal by subsequent legislation.

SECTION 42. (a) The department of education shall convene an interagency working group to develop comprehensive plans for transferring certain rights, powers, functions, duties, and resources, including positions, from the departments of accounting and general services, budget and finance, health, human resources development, the attorney general, and human services to the department of education. Rights, powers, functions, duties, and resources including positions to be transferred shall include but not be limited to:

- (1) The expending of capital improvement funds for construction of new school facilities and resources, for repairs and maintenance services;
 - (2) The funding of collective bargaining agreement increases;
 - (3) The securing, administering, use, and expending of federal funds and other aid, including their custodial supervision;
 - (4) The capital improvement project allotment process;
 - (5) The determination of retirement and other employee benefits;
 - (6) The operation of a human resources system including the recruitment, certification, examination, management, classification, and compensation of department of education employees and labor relations;
 - (7) Negotiating workers' compensation claims and labor-management relations within the department of education;
 - (8) Conducting employment background checks for the after-school plus program, private vendors, and other employees and trainees who work with public school students; and
 - (9) School health aides.
- (b) The comprehensive plans shall identify:
- (1) Each position to be transferred by position number; and
 - (2) All moneys budgeted in support of each position to be transferred, including moneys for direct and indirect employee benefits,

at the lowest level on the state program structure.

(c) The working group shall include the following individuals or their designees:

- (1) The superintendent of education;
- (2) The comptroller;
- (3) The director of human resources development;
- (4) The director of human services;
- (5) The director of health;
- (6) The director of finance;
- (7) The attorney general;
- (8) The exclusive bargaining agents of affected employees; and
- (9) Any community members that may be appointed by the superintendent.

(d) The department of education may recommend to the legislature deletion or addition of rights, powers, functions, duties, and resources, including positions, that are to be transferred as a result of the working group's deliberations which shall

be included and reflected in the required plans and legislation. The working group shall submit its comprehensive plans, including proposed legislation, to implement the transfer of rights, powers, functions, duties, and resources, including positions relating to the:

- (1) Department of accounting and general services and department of human resources development not less than thirty days prior to the convening of the regular session of 2005; and
- (2) Department of budget and finance, department of the attorney general, department of health, and department of human services not less than thirty days prior to the convening of the regular session of 2006.

SECTION 43. The working group on interagency relations shall cease to exist on June 30, 2007.

SECTION 44. All the rights, powers, functions, duties, and resources, excluding positions unless transferred under the Supplementary Appropriations Act of 2004, of the department of accounting and general services relating to school physical plant operations and maintenance, including moneys in:

- (1) The state educational facilities repair and maintenance account; and
 - (2) The school physical plant operations and maintenance account;
- are transferred to the department of education effective July 1, 2004.

SECTION 45. All the rights, powers, functions, duties, and personnel relating to the Hawaii 3R's school repair and maintenance fund, are transferred to the department of education effective July 1, 2004.

SECTION 46. (a) All the rights, powers, functions, duties, and resources of:

- (1) The department of accounting and general services relating to capital improvement programs, including the:
 - (A) Expending of capital improvement funds for the acquisition and development of land, the design and construction of new facilities, and the making of renovations or additions to existing facilities, including moneys in the state educational facilities improvement special fund; and
 - (B) Buying, purchasing, renting, leasing, or otherwise acquiring of any good, service, or construction, including the description of requirements, selection and solicitation of sources, preparation and awarding of contracts, payment of vendors, and all other phases of contract administration;
- (2) The department of accounting and general services relating to repair and maintenance functions not transferred to the department of education under section 44 of this Act; and
- (3) The department of human resources development relating to the:
 - (A) Operation of a centralized human resources system that encompasses the classes of work performed by department of education employees, and that integrates payroll, records, transactions, leaves, and reports; and
 - (B) Recruitment, certification, examination, management, classification, and compensation of department of education employees, including labor relations;

are transferred to the department of education effective July 1, 2005, subject to repeal by subsequent legislation.

(b) All moneys budgeted in support of each position to be transferred to the department of education, including moneys for direct and indirect employee bene-

fits, are transferred to the department of education effective July 1, 2005, subject to repeal by subsequent legislation.

SECTION 47. (a) All the rights, powers, functions, duties, and resources of:

- (1) The department of budget and finance relating to the:
 - (A) Funding of collective bargaining agreement increases; and
 - (B) Securing, administering, use, and expending of federal funds and other aid, including their custodial supervision;
- (2) The department of the attorney general relating to:
 - (A) The negotiating of workers' compensation claims; and
 - (B) Labor-management relations within the department of education;
- (3) The department of human services relating to the conducting of employment background checks for the after-school plus program, private vendors, and other employees and trainees who work with public school students; and
- (4) The department of health relating to school health aides and public health nurses who supervise school health aides;

are transferred to the department of education effective July 1, 2006, subject to repeal by subsequent legislation.

(b) All moneys budgeted in support of each position to be transferred to the department of education, including moneys for direct and indirect employee benefits, are transferred to the department of education effective July 1, 2006, subject to repeal by subsequent legislation.

SECTION 48. All resources, appropriations, records, equipment, databases, software, programming, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of accounting and general services, department of budget and finance, department of human services, and department of health relating to the functions transferred to the department of education shall be transferred with the functions to which they relate.

SECTION 49. No later than July 1, 2005, the board of education shall adopt a single school calendar for all public schools beginning with the 2006-2007 school year, provided that this section shall not apply to multi-track schools, new century charter schools, and new century conversion charter schools.

SECTION 50. Section 36-35, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) There is created in the state general fund under [~~AGS 807 (physical plant operations and maintenance)~~] EDN 100 (school based budgeting) the state educational facilities repair and maintenance account, into which shall be deposited legislative appropriations to the account designated for use solely to eliminate the backlog of school repair and maintenance projects, including the repair or replacement of fixtures, furnishings, and equipment, existing on June 30, 2000. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Based on the prioritization approved by the department of education as prescribed by section 302A-1505, appropriations or authorizations from the account shall be expended by the [~~comptroller~~] superintendent of education.

(b) The department of education[, with the assistance of the department of accounting and general services,] shall review the existing condition of school facilities and establish specific vision plans for each school complex based on

current repair and maintenance requirements and overall repair and maintenance priorities.”

2. By amending subsections (e), (f), and (g) to read:

“(e) The expenditure of funds for any project with an estimated total cost of less than \$100,000 shall be exempt from chapter 103D and section 464-4; provided that:

- (1) The [comptroller] superintendent of education shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the [comptroller] superintendent of education is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the [comptroller] superintendent of education to any other provision of chapter 103D;
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three proposals shall be solicited for each project, based on rules adopted by the [comptroller;] superintendent of education;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous proposal;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

For all projects, the [comptroller] superintendent of education shall develop a strategy for the efficient and cost-effective use of government and private-sector workforces and consider increased flexibility through public-private partnering, design-build options, cost plus, job order contracts, performance-based contracts, request for proposals, and any other means to improve communications and accelerate repairs while preserving the quality of the repairs.

(f) The [comptroller] superintendent of education shall ensure that all repair and maintenance projects achieve maximum cost-efficiency by emphasizing functional or performance criteria, uniformity of design, and commonality of products, and by avoiding unique or custom requirements that increase costs. The [comptroller] superintendent of education shall develop project specifications based on generic specifications or prescriptive specifications using standard commercial products. Prescriptive specifications may include a qualified product list.

For the purposes of this subsection:

“Generic specification” means a technical specification that is written in a clear, unambiguous, and nonrestrictive manner establishing:

- (1) Design, performance, or functional requirements to identify the work to be performed; and
- (2) Material standards to be used on a project.

“Prescriptive specification” means a technical specification:

- (1) Establishing that the required work to be performed is written in a clear, unambiguous, and nonrestrictive manner; and
- (2) Listing manufacturers or products that are acceptable for use on the project.

“Standard commercial product” means a product or material that in the normal course of business is customarily maintained in stock by, or readily available for marketing from a manufacturer, distributor, or dealer.

This subsection shall not apply to any school facility designated a historic property pursuant to section 6E-5.5.

(g) The ~~[comptroller]~~ superintendent of education shall submit an annual report to the legislature, which shall include a financial statement of the account and the status of repair and maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. Expenditures for repair and maintenance projects undertaken pursuant to this section shall be posted electronically on the Internet by the department of ~~[accounting and general services]~~ education within thirty days of each project’s completion.”

SECTION 51. Section 36-36, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) There is created in the state general fund under ~~[AGS-807 (physical plant operations and maintenance)]~~ EDN 400 (school support) the school physical plant operations and maintenance account, into which shall be deposited all legislative appropriations to the account.

The moneys in the account shall be used solely for school repairs and preventive maintenance projects scheduled after June 30, 2001. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Based on the prioritization approved by the department of education as prescribed by section 302A-1505, appropriations or authorizations from the account shall be expended by the ~~[comptroller]~~ superintendent of education.”

2. By amending subsections (d) and (e) to read:

“(d) The expenditure of funds made under this Act for any project with an estimated total cost of less than \$100,000 shall be exempt from chapter 103D and section 464-4; provided that:

- (1) The ~~[comptroller]~~ superintendent of education shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the ~~[comptroller]~~ superintendent of education is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the ~~[comptroller]~~ superintendent of education to any other provision of chapter 103D;
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project based on rules adopted by the ~~[comptroller]~~ superintendent of education;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

(e) The ~~[comptroller]~~ superintendent of education shall submit an annual report to the legislature, which shall include a financial statement of the account and

the status of school repair and preventive maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. The department of ~~[accounting and general services]~~ education shall post the following reports electronically on the Internet and update them quarterly:

- (1) Expenditures for school repair and preventive maintenance projects undertaken pursuant to this section, shall be posted within thirty days of each project's completion; and
- (2) A list of each school's repair and maintenance needs to be undertaken."

SECTION 52. Section 37-41.5, Hawaii Revised Statutes, is amended to read as follows:

"§37-41.5 Department of education; carryover of funds. (a) The department of education may retain up to five per cent of any appropriation, except for appropriations to fund financing agreements entered into in accordance with chapter 37D, ~~[for the school-based budgeting program EDN 100 and for the comprehensive school support services program EDN 150]~~ at the close of a fiscal year and the funds retained shall not lapse until June 30 of the first fiscal year of the next fiscal biennium. The department of education shall submit:

- (1) A report to the director of finance ninety days after the close of each fiscal year, which shall be prepared in the form prescribed by the director of finance and shall identify the total amount of funds that will carry over to the next fiscal year; and
- (2) A copy of this report to the legislature, as well as a report identifying the carryover of funds on a school-by-school basis, at least twenty days prior to the convening of the next regular session of the legislature.

~~[(b) Any appropriation retained in accordance with this section shall be used exclusively for the school-based budgeting program EDN 100 and the comprehensive school support services program EDN 150, and of those appropriations]~~ (b) Appropriations allocated to the schools[, funds] shall remain within the budget of the school to which they were originally allocated; provided that the retention of an appropriation shall not be used by the department as a basis for reducing a school's future budget requirements."

SECTION 53. Section 37-74, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~"(d) No appropriation transfers or changes between programs or agencies shall be made without legislative authorization; provided that:~~

- ~~(1) Authorized transfers or changes, when made, shall be reported to the legislature;~~
- ~~(2) Except with respect to appropriations to fund financing agreements under chapter 37D, the University of Hawaii shall have the flexibility to transfer appropriated funds and positions for the operating cost category among programs, among cost elements in a program, and between quarters, as applicable; except with respect to appropriations to fund financing agreements under chapter 37D, the department of education shall have the flexibility to transfer appropriated funds and positions for the operating cost category among programs and among cost elements in a program, and between quarters, as applicable; and the Hawaii health systems corporation shall have the flexibility to transfer special fund appropriations among community hospitals facilities as applicable; provided that the Hawaii health systems corporation shall maintain the integrity and services of each individual facility and shall not~~

transfer appropriations out of any facility that would result in a reduction of services offered by the facility, with due regard for statutory requirements, changing conditions, the needs of the programs, and the effective utilization of resources; and

- (3) The university and the department of education shall account for each transfer implemented under this subsection in quarterly reports to the governor and annual reports at the end of each fiscal year to the legislature and the governor, which shall be prepared in the form and manner prescribed by the governor and shall include information on the sources and uses of the transfer."

SECTION 54. Section 302A-1502.4, Hawaii Revised Statutes, is amended by amending subsection (q) to read as follows:

"(q) The ~~[state comptroller]~~ superintendent of education shall submit an annual report of the progress of the Hawaii 3R's school repair and maintenance fund no later than twenty days prior to the convening of each regular session of the legislature."

PART IX EDUCATIONAL ACCOUNTABILITY

SECTION 55. As a result of the passage of Act 238, Session Laws of Hawaii 2000, a report was conducted by The Accord Group, LLC. This report synthesized input from a wide variety of stakeholders throughout the State and was designed to ascertain "what the State of Hawaii – from the top of the system to the bottom – must do to hold 183,000 students, and 260 + schools accountable, and what kinds of 'public accounting' must be done by the Board of Education, District and State Offices of the Board of Education, the Governor, parents, the business community, the Legislature, and other key stakeholders in the overall system."

The collaborative fact-finding process found agreement among the stakeholders on three primary goals that the public educational system should foster among students: academic achievement, safety and well being, and civic responsibility. Specific performance and competency indicators in these areas remain somewhat difficult to formulate, as the proxies used to measure success in these broad areas must be valid and broadly accepted by the major stakeholders. Nevertheless, the prompt development of such indicators remains critical to the ongoing implementation of a comprehensive and systematic educational accountability system that is straightforward and easily tracked over time.

Areas in which performance and competency indicators in academic achievement should be developed include such laudable goals as:

- (1) Achieving reading proficiency by the end of third grade;
- (2) Developing personalized education plans for each student;
- (3) Teaching students the ability to think critically; and
- (4) Producing graduates who do not need remediation.

Similarly, safety and well being could be measured by proxies such as:

- (1) Attendance;
- (2) Comprehensive student support system plans in place to support each student with a personalized classroom climate, differentiated classroom practices, family involvement, early intervention, support for transitions between grades, community outreach and support, and specialized assistance and crisis or emergency support; and
- (3) Disciplinary offenses as provided by the board of education administrative rules.

The third area identified in the Accord Group report, civic responsibility, is the most abstract and difficult to measure. General concepts that should be addressed include:

- (1) Knowledge of the fundamental processes of American democracy;
- (2) Skills necessary to actively engage in a democratic society;
- (3) Understanding and awareness of community and global issues;
- (4) Respect for self and others and ability to work together as part of a team; and
- (5) Participation in school and community organizations.

The legislature finds that the indicators for programmatic and fiscal accountability that are used should be made available annually to the governor, legislature, board of education, parents, and general public in a format that is easy to comprehend. The department of education shall report trend data as such data becomes available.

Measures in existence on the effective date of this Act shall be reported to the legislature and the governor no later than twenty days prior to the convening of each regular session. New measures to be developed by the department of education shall be reported no later than twenty days prior to the convening of each regular session thereafter. The department of education shall report trend data as such data becomes available.

The purpose of this part is to:

- (1) Assess and track the academic achievement, safety and well being, and civic responsibility of individual students;
- (2) Adding fiscal provisions to accountability statutes;
- (3) Adding provisions to hold complex area superintendents and principals accountable; and
- (4) Requiring the department of education to report back the legislature no later than twenty days prior to the 2005 regular session regarding specific performance and competency indicators that should be used to measure academic achievement, safety and well being, and civic responsibility among students.

SECTION 56. Section 302A-1004, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1004 Educational accountability system; annual reports. (a)

The department shall implement a comprehensive system of educational accountability to motivate and support the improved performance of students and the education system. This accountability system shall:

- (1) Include student accountability; school or collective [professional] accountability; individual professional accountability for teachers, principals, and other employees; and public accounting [~~for other significant partners to the education process (including, but not limited to,)~~ to parents, community members, businesses, higher education, media, and political leadership[]];
- (2) Link authority and [adequate] resources to responsibility;
- (3) Define clear roles for all parties and lines of responsibility and mutual obligation and develop a collaborative process with stakeholders, including representatives of appropriate bargaining units, parents, administration, and students;
- (4) [~~Involve fair and adequate assessment against agreed-upon goals;~~ Assess and track measures of academic achievement, safety and well being, and civic responsibility of individual students at selected grade levels and report trend data on these measures over time annually;]

- (5) Invoke a full and balanced set of appropriate consequences for observed performance, including rewards and recognition for those schools that meet or exceed their goals, assistance to those that fall short, and sanctions for those that, given adequate assistance and ample time, continue to fail to meet goals;
- [(6)] Involve:
 - (A) ~~A statewide student assessment program that provides annual data on student, school, and system performance at selected benchmark grade levels in terms of student performance relative to statewide content and performance standards and embodies high and rigorous expectations for the attainment of all students; and~~
 - (B) ~~An annual assessment in core subjects for each grade level, as conducted by each school;~~
- (7) ~~Involve a comprehensive school profile or report card for each school, which shall include, but not be limited to, student performance measures, school attendance, drop-out rates, and parental involvement. These reports shall be made available annually to the board, the governor, the legislature, the parents, and the general public;~~
- (6) Involve an annual statewide assessment program that provides a report card containing trend data on school, school complex, and system performance at selected benchmark grade levels with performance indicators in areas relating to student achievement, safety and well being, and civic responsibility. These performance indicators shall include but not be limited to:
 - (A) Student performance relative to statewide content and performance standards; and
 - (B) School attendance and drop-out rates;
- [(8)] Require that teachers and administrators engage in the continuous professional growth and development that ensure their currency with respect to disciplinary content, leadership skill, knowledge, or pedagogical skill, as appropriate to their position. This requirement may be established by the department in terms of credit hours earned or their equivalent in professional development activity certified by the department as appropriate in focus and rigor; [and]
- [(9)] (8) Establish an explicit link between professional evaluation results and individual accountability through professional development of the knowledge, skill, and professional behavior necessary to the position, by requiring that results of the professional evaluation be used by the department to prescribe professional development focus and content, as appropriate[-];
- (9) Include an annual statewide fiscal accountability program, which includes a published report card that contains trend data on school, school complex, and system-wide plans and results, including:
 - (A) Amounts allocated;
 - (B) Amounts expended;
 - (C) Amounts carried over; and
 - (D) Any significant changes to the budget, with an explanation for the change;
- (10) Include an evaluation of the effectiveness of complex area superintendents and principals in supporting:
 - (A) Students' academic achievement, safety and well being, and civic responsibility; and

(B) The satisfaction of stakeholders affected by the work of the complex area superintendents and principals, which may be measured by broadbased surveys; and

(C) Fiscal accountability.

[Beginning with the 2001-2002 school year, the] (b) The department shall submit to the legislature, the governor, and the board of education at least twenty days prior to the convening of each regular legislative session a report of the specifics of the [design] implementation of the comprehensive accountability system, as well as the fiscal requirements and legislative actions necessary to [create] maintain and improve the accountability system.

[(b)] (c) The department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each regular [legislative] session, an educational status report that includes but is not limited to the following:

- (1) Results of school-by-school assessments of educational outcomes;
- (2) Summaries of each school's standards implementation design;
- (3) Summary descriptions of the demographic makeup of the schools, with indications of the range of these conditions among schools within Hawaii;
- (4) Comparisons of conditions affecting Hawaii's schools with the conditions of schools in other states; [and]
- (5) Other such assessments as may be deemed appropriate by the board[-];
and
- (6) Any other reports required by this section.

[(e)] (d) The department shall provide electronic access to computer-based financial management, student information, and other information systems to the legislature and the auditor. The department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each [legislative] regular session, a school-by-school expenditure report that includes but is not limited to the following:

- (1) The financial analysis of expenditures by the department with respect to the following areas:
 - (A) Instruction, including face-to-face teaching, and classroom materials;
 - (B) Instructional support, including pupil, teacher, and program support;
 - (C) Operations, including non-instructional pupil services, facilities, and business services;
 - (D) Other commitments, including contingencies, capital improvement projects, out-of-district obligations, and legal obligations; and
 - (E) Leadership, including school management, program and operations management, and district management; and
- (2) The measures of accuracy, efficiency, and productivity of the department, districts, and schools in delivering resources to the classroom and the student.

[(d)] (e) The superintendent of education is responsible for the development and implementation of an educational accountability system. The system shall include consequences and shall be designed through a collaborative process involving stakeholders that shall include parents, community members, the respective exclusive representatives, as well as others deemed appropriate by the superintendent.

For the purposes of this section, negotiations under chapter 89 shall be between the superintendent or the superintendent's designee and the respective exclusive representative, and shall be limited to the impact on personnel arising from

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the superintendent's decision in implementing the educational accountability system. After the initial agreement is negotiated, provisions on the impact of the accountability on personnel may be reopened only upon mutual agreement of the parties."

SECTION 57. Section 302A-1301, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§302A-1301**~~]]~~ **School system financial accountability.** (a) Beginning with the 1995-1997 fiscal biennium, the department's administrative expenditures shall not exceed 6.5 per cent of the total department operating budget unless approved by the legislature.

~~[(b) The department shall not transfer any funds appropriated under the school-based budgeting program EDN 100 of the state budget, except for unforeseeable circumstances that pose a threat to the health and safety of personnel and students, and subject to approval by the governor and notification to the legislature.]~~

(b) Not less than seventy per cent of appropriations for the total budget of the department, excluding debt service and capital improvement programs, shall be expended by principals."

SECTION 58. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302A- Board of education; community meetings. The board shall hold not less than two community meetings annually in each departmental school district in addition to their regular meetings to discuss and receive input from the community on public education and public library issues. The board chairperson shall designate board members to attend the community meetings. These community meetings shall not be held for the purpose of formulating educational policy. The community meetings shall be exempt from sections 92-2.5, 92-7, 92-9, and 92-41, provided that the board shall give written public notice of each community meeting. The meeting notice shall indicate the date, time, and place of the meeting, and shall be filed in the office of the lieutenant governor and in the board's office for public inspection six calendar days before the meeting. The notice shall also be posted at the site of the meeting."

PART X PILOT

SECTION 59.¹ There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000, or so much thereof as may be necessary for fiscal year 2004-2005, for the piloting of school community councils and development of academic and financial plans at selected public schools prior to the statewide implementation of the weighted student formula.

SECTION 60. The sum appropriated shall be expended by the department of education for the purposes of this Act.

PART XI FINDINGS AND RECOMMENDATIONS

SECTION 61. The department of education shall submit findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2005 including:

- (1) A report regarding progress made in and the impact on the public education system of:
 - (A) Establishing a weighted student formula;
 - (B) Providing additional information technology;
 - (C) Empowering principals through the Hawaii principals academy and other means;
 - (D) Strengthening community involvement through school community councils and parent-community networking centers;
 - (E) Providing more mathematics textbooks;
 - (F) Lowering class size in kindergarten, grade one, and grade two;
 - (G) Providing full-time, year-round, high school student activity coordinators;
 - (H) Providing support for students who need additional help to succeed in school;
 - (I) Establishing a national board certification incentive program for teachers;
 - (J) Enhancing teacher education;
 - (K) Reducing the bureaucracy that hampers the effectiveness of the department of education;
 - (L) Improving the educational accountability system; and
 - (M) Requiring the board of education members to hold community meetings in their districts; and
- (2) A list of statutes, rules, policies, or procedures that need to be amended, removed, or enacted to enable the effective implementation of the weighted student formula, implementation of school community councils, and enhance transparency in financial reporting; and
- (3) A list of programs recommended to be repealed to enable the department and individual schools to have greater flexibility in budgeting, operations, and curriculum management.

PART XII MISCELLANEOUS

SECTION 62. For the purposes of this Act, any appropriation made for public schools shall exclude new century charter schools and new century conversion charter schools unless otherwise included.

SECTION 63. In the event of a conflict between this Act and section 89-10(d) or 89-19, Hawaii Revised Statutes, this Act shall control.

SECTION 64. The sums appropriated by this Act for fiscal year 2004-2005 shall be deemed part of the Supplemental Appropriations Act of 2004 for the department of education and University of Hawaii for the purposes of developing and submitting the executive budget request for the biennium budget for fiscal years 2005-2006 and 2006-2007, except for the one-time supplemental appropriation for mathematics textbooks and mathematics learning materials in schools made in section 35 of this Act. The department of budget and finance shall consider the sums appropriated by this Act as if appropriated in the Supplemental Appropriations Act of 2004, except for the one-time supplemental appropriation for mathematics textbooks and mathematics learning materials in schools made in section 34 of this Act.

SECTION 65. The legislative reference bureau shall conduct a study to determine conforming amendments to the Hawaii Revised Statutes that may be

necessary as a result of the amended definition of “public school” in section 5, to effectuate the purposes of this Act without altering either the effect or intent of existing statutory language.

The legislative reference bureau shall submit its findings, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2005.

SECTION 66. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 67. This Act shall take effect upon its approval, provided that:

- (1) Sections 7, 8, 10, 11, 15, 17, 18, 32, 33, 35, 36, 39, 40, 50, 51, 52, 53, 54, 59, and 60 shall take effect on July 1, 2004;
- (2) Sections 5, 13, 16, 21, 22, 23, 24, 25, 26, 30, 31, and 38 shall take effect on July 1, 2005, and shall apply to the 2005-2006 school year; and
- (3) Sections 2, 4, 6, 27, 28, 29, and 57 shall take effect on July 1, 2006, and shall apply to the 2006-2007 school year.

(Vetoed by Governor and veto overridden by Legislature on May 3, 2004.)

Notes

1. Act 221 amends this section.

2. Should be section 302A-101.

3. Edited pursuant to HRS §23G-16.5.

ACT 52

H.B. NO. 2743

This Act reflects the Legislature’s override of all of the item vetoes in Act 43.

A Bill for an Act Relating to Non-General Funds.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature determines that there is in the animal quarantine special fund at least \$800,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the animal quarantine special fund to the general fund the sum of ~~\$800,000~~ \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 2. The legislature determines that there is in the agricultural loan reserve fund at least \$900,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of ~~\$900,000~~ \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 3. The legislature determines that there is in the stadium special fund at least \$600,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 4. The legislature determines that there is in the state motor pool revolving fund at least \$1,000,000 in excess of the requirements of the fund. On July

1, 2004, the director of finance is authorized to transfer from the state motor pool revolving fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 5. The legislature determines that there is in the state identification revolving fund at least \$300,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the state identification revolving fund to the general fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 6. The legislature determines that there is in the medicaid investigations recovery fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 7. The legislature determines that there is in the research subaccount of the tourism special fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the research subaccount of the tourism special fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 8. The legislature determines that there is in the foreign-trade zones special fund at least \$400,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the foreign-trade zones special fund to the general fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 9. The legislature determines that there is in the Aloha tower fund at least \$750,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the Aloha tower fund to the general fund the sum of \$750,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 10. The legislature determines that there is in the Hawaii community development revolving fund at least \$10,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the Hawaii community development revolving fund to the general fund the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 11. The legislature determines that there is in the dwelling unit revolving fund at least \$10,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the dwelling unit revolving fund to the general fund the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 12. The legislature determines that there is in the human resources development special fund at least \$150,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the human resources development special fund to the general fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 13. The legislature determines that there is in the environmental response revolving fund at least \$500,000 in excess of the requirements of the fund.

On July 1, 2004, the director of finance is authorized to transfer from the environmental response revolving fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 14. The legislature determines that there is in the environmental management special fund at least \$2,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the environmental management special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 15. The legislature determines that there is in the special land and development fund at least \$1,500,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of \$1,500,000 \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 16. The legislature determines that there is in the special land and development fund at least \$1,500,000 in excess of the requirements of the fund. On January 1, 2005, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of \$1,500,000 \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 17. The legislature determines that there is in the state highway fund at least \$11,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the state highway fund to the general fund the sum of \$11,000,000 \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 18. The legislature determines that there is in the state highway fund at least \$1,500,000 in excess of the requirements of the fund. On June 29, 2005, the director of finance is authorized to transfer from the state highway fund to the general fund the sum of \$1,500,000 \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005.

PART II

SECTION 19. Section 28-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All unencumbered and unexpended moneys in excess of [~~\$1,000,000~~] \$500,000 remaining on balance in the tobacco enforcement special fund at the close of June 30 of each year shall lapse to the credit of the state general fund.”

SECTION 20. Section 107-11, Hawaii Revised Statutes, is amended to read as follows:

“**§107-11 Parking; control by comptroller.** (a) The comptroller may assess and collect reasonable fees for parking for all government officials and employees, install parking meters, and restrict and otherwise control parking on all state lands within the comptroller’s jurisdiction.

(b) The comptroller may make such rules [~~and regulations~~] as may be found necessary to carry out the objects and provisions of this section relating to the control and restriction of parking on all lands of the State which are within the comptroller’s jurisdiction. The rules [~~and regulations~~] shall be [~~promulgated~~] adopted as provided in chapter 91.

(c) Any person who violates any of the rules adopted by the comptroller shall be fined not more than \$50 for each violation; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291.

(d) The comptroller is authorized to confer the powers of police officers, including the power to serve and execute warrants, arrest offenders, and serve notices and orders, to employees of the department of accounting and general services who are engaged as special officers to enforce this section.

(e) There is hereby created a fund to be known as the "state parking revolving fund" which shall be used to carry out the purposes of this section. Such amounts shall be expended by the comptroller from the fund, as may be necessary, to defray the cost of paving parking areas, the purchase and installation of parking meters and the operation thereof, and of other parking facilities on state land within the comptroller's jurisdiction. The state parking revolving fund shall be utilized used to conform with the special fund depository requirements under section 39-62 for all revenues and user taxes received as the result of the issuance of any state parking facility undertaking or loan program revenue bonds.

(f) All fees, charges, and other moneys collected pursuant to this section, and all revenues and user taxes received pursuant to section 39-62 as the result of the issuance of any state parking facility undertaking or loan program revenue bonds shall be deposited in the state parking revolving fund.

(g) All moneys in excess of \$500,000 remaining on balance in the state parking revolving fund on June 30 of each fiscal year shall lapse to the credit of the state general fund. On July 1 of each year, the director of finance is authorized to transfer any excess funds in the state parking revolving fund to the state general fund."

PART III

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 22. This Act shall take effect on June 30, 2004.

(Approved May 3, 2004.)

Note

1. Item vetoed, replaced with "\$0", and initialed "LL"; veto overridden and initialed "C.K.Y.Say" and "RBunda".

ACT 53

H.B. NO. 1043

A Bill for an Act Making Appropriations for Salary Increases for Public Employees.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 all collective bargaining cost items in the agreements negotiated with the

ACT 53

exclusive bargaining representatives of collective bargaining units (2), (3), (4), (6), (8), and (13):

	<u>FY 2004-2005</u>
General funds	\$24,214,636
Special funds	\$ 2,658,070
Federal funds	\$ 3,587,688
Other funds	\$ 1,449,251

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the executive branch who are excluded from collective bargaining:

	<u>FY 2004-2005</u>
General funds	\$3,615,600
Special funds	\$ 497,586
Federal funds	\$ 246,195
Other funds	\$ 263,627

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for the purposes of this part.

PART III

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to administration (JUD 601) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representatives of collective bargaining units (2), (3), (4), (6), (8), and (13):

	<u>FY 2004-2005</u>
General funds	\$2,539,878
Special funds	\$ 56,325

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the chief justice for the purposes of this part.

PART IV

SECTION 7. There is appropriated or authorized from the source of funding indicated below to administration (JUD 601) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees of the judiciary who are excluded from collective bargaining:

	<u>FY 2004-2005</u>
General funds	\$316,586
Special funds	\$ 1,750

SECTION 8. The sums appropriated or authorized by this part shall be allotted by the chief justice for the purposes of this part.

PART V

SECTION 9. There are appropriated or authorized from the source of funding indicated below to hospital care—Hawaii Health Systems Corporation (HTH 210) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 all collective bargaining cost items in agreements with the exclusive bargaining representatives of collective bargaining units (2), (3), (4), (6), (8), and (13) assigned to the Hawaii health systems corporation:

	<u>FY 2004-2005</u>
General funds	\$1,264,114

SECTION 10. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health systems corporation for the purposes of this part.

PART VI

SECTION 11. There are appropriated or authorized from the source of funding indicated below to hospital care—Hawaii Health Systems Corporation (HTH 210) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees assigned to the Hawaii health system corporation who are excluded from collective bargaining:

	<u>FY 2004-2005</u>
General funds	\$288,082

SECTION 12. Funds appropriated or authorized by this part shall be allotted by the director of finance to the Hawaii health system corporation for the purposes of this part.

PART VII

SECTION 13. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 14. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2005, shall lapse as of that date.

SECTION 15. This Act shall take effect on July 1, 2004.

(Vetoed by Governor and veto overridden by Legislature on May 3, 2004.)

A Bill for an Act Relating to Peer Review.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that in 1999, the Institute of Medicine estimated that medical errors contribute to forty-four thousand to ninety-eight thousand deaths per year, making it the eighth leading cause of death, higher than motor vehicle accidents, breast cancer, and AIDS. The annual cost to hospitals stemming from medical errors has been conservatively estimated to range from \$17,000,000,000 to \$29,000,000,000.

Nationally, the response has been to design medical error reporting systems that encourage full and open reporting of medical errors and adverse outcomes while protecting the data collection and reporting process. To date, there is no centralized medical error reporting system, and little reliable data are available to identify Hawaii's patient safety issues at the statewide level. There are no baseline data to identify trends and compare Hawaii's data with national data.

However, the data are accessible to plaintiffs' attorneys. Accordingly, if health care providers and public and private organizations involved in the data and reporting process are not protected, it is unlikely that full and open reporting will occur.

In response, most states have protected patient safety data by protecting health care provider activities that fall within the statutory definition of "peer review." These laws promote review, discussion, and critique of medical care processes in an environment protected from recrimination or discovery. However, the legislature finds that Hawaii's current peer review protection law (section 624-25.5, Hawaii Revised Statutes) is narrow in scope and does not provide adequate protections for hospitals, physicians, and other health care providers to encourage open discussions about medical errors and adverse outcomes. Before a medical error reporting system can become operational in Hawaii, statutory protection for the generation and reporting of information is required.

The purpose of this Act is to provide the necessary protections for physicians, hospitals, and other health care providers to enable a medical error reporting system to be established and functional in the State.

SECTION 2. Section 624-25.5, Hawaii Revised Statutes, is amended to read as follows:

"§624-25.5 Proceedings and records of peer review committees and quality assurance committees. (a) As used in this section:

"Health care review organization" means any organization that gathers and reviews information relating to the procedures and outcomes of health care providers and the care and treatment of patients for the purposes of evaluating and improving quality and efficiency of health care.

"Licensed health maintenance organization" means a health maintenance organization licensed in Hawaii under chapter 432D.

"Peer review committee" means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network of the persons engaged in its

profession or occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

“Preferred provider organization” or “preferred provider network” means a partnership, association, corporation, or other entity ~~[which] that~~ delivers or arranges for the delivery of health services, and ~~[which] that~~ has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

“Professional society” or “society” means any association or other organization of persons engaged in the same profession, occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice.

“Quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, long-term care facility, skilled nursing facility, assisted living facility, home care agency, hospice, health maintenance organization, preferred provider organization, or preferred provider network providing medical, dental, or optometric care, whose function is to monitor and evaluate patient care, ~~[and] to identify, study, and correct deficiencies [and seek improvements in the patient care delivery process.]~~ in the health care delivery system to reduce the risk of harm to patients and improve patient safety or otherwise improve the quality of care delivered to patients, and to convene meetings for the presentation and critique of cases for educational purposes.

(b) Neither the proceedings nor the records of peer review committees, or quality assurance committees shall be subject to discovery. For the purposes of this section, “records of quality assurance committees” are limited to recordings, transcripts, minutes, summaries, and reports of committee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports ~~[which] that~~ state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at the direction of, the committees. Except as hereinafter provided, no person in attendance at a meeting of the committee shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(c) Information and data relating to a medical error reporting system that is compiled and submitted by a medical provider to a health care review organization for the purpose of evaluating and improving the quality and efficiency of health care, when done through a peer review committee or hospital quality assurance committee, shall not be subject to discovery.

For purposes of this subsection, the information and data protected shall include proceedings and records of a peer review committee, hospital quality assurance committee, or health care review organization that include recordings, transcripts, minutes, and summaries of meetings, conversations, notes, materials, or reports created for, by, or at the direction of a peer review committee, quality assurance committee, or a health care review organization when related to a medical error reporting system.

Information and data protected from discovery shall not include incident reports, occurrence reports, statements, or similar reports that state facts concerning

a specific situation and shall not include records made in the regular course of business by a hospital or other provider of health care, including patient medical records. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were reviewed or considered by a medical provider for submission to, or were in fact submitted to, a health care review organization.

~~[(e)]~~ (d) The prohibitions contained in this section shall not apply to medical, dental, or optometric society committees that exceed ten per cent of the membership of the society, nor to any committee if any person serves upon the committee when the person's own conduct or practice is being reviewed.

~~[(d)]~~ (e) The prohibitions contained in this section shall apply to investigations and discovery conducted by the board of medical examiners, except as required by sections 92-17, 453-8.7, or 663-1.7(e).''

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2004.

(Approved May 5, 2004.)

ACT 55

H.B. NO. 1294

A Bill for an Act Relating To Environmental Impact Statements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the purpose of environmental impact statements under chapter 343, Hawaii Revised Statutes, is to include the following environmental considerations in the state and county planning process:

- (1) The environmental effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and the State;
- (2) The effects of the economic activities arising out of the proposed action;
- (3) Measures suggested to minimize the adverse effects of the proposed action; and
- (4) Alternatives to the proposed action and the environmental effects of such alternatives.

Chapter 343 also provides that the environmental council shall prescribe procedures for the submission, distribution, review, acceptance or nonacceptance, and withdrawal of an environmental impact statement.

Furthermore, at the county level, each county's department of planning or department of planning and permitting serves as a technical and advisory resource to the mayor and county council on all planning issues, including zoning and general-plan amendments, which, by county charter, require legislative action by the county council. Although section 343-2 limits the definition of agency to a department, office, board, or commission within the executive branch of the State or a county, it

is not the legislature's intent to preclude the planning agency of each county from acting in its technical and advisory capacity to the county's legislative body.

However, the legislature finds that legal challenges have arisen regarding the most appropriate agency to receive, process, and accept or reject an environmental impact statement. It has become necessary to clarify statutorily what has been established by administrative rules and past practice with respect to the submission, review, and acceptance or nonacceptance of the document.

In addition, the legislature finds that proposals for privately financed wastewater facilities, waste-to-energy facilities, landfills, oil refineries, or power-generating facilities on private lands fail to trigger an environmental review under current law. Thus, this Act specifically includes these types of proposed actions within the scope of chapter 343.

The purpose of this Act is to:

- (1) Close loopholes in the environmental review process by including proposals for any:
 - (A) Wastewater facility, except an individual wastewater system or a wastewater facility serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;
 - (D) Oil refinery; or
 - (E) Power-generating facility,
 in the list of proposals for which an environmental assessment and impact statement may be required; and
- (2) Clarify the procedure for submission, processing, and approval of environmental assessments and impact statements by specifically authorizing the respective planning departments to process and accept such informational documents.

SECTION 2. Section 343-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Power-generating facility” means:

- (1) A new, fossil-fueled, electricity-generating facility, where the electrical output rating of the new equipment exceeds 5.0 megawatts; or
- (2) An expansion in generating capacity of an existing, fossil-fueled, electricity-generating facility, where the incremental electrical output rating of the new equipment exceeds 5.0 megawatts.”

SECTION 3. Section 343-5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions [which] that:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects [which] that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies;
- (2) Propose any use within any land classified as conservation district by the state land use commission under chapter 205;
- (3) Propose any use within [the] a shoreline area as defined in section 205A-41;

- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
- (5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";
- (6) Propose any amendments to existing county general plans where ~~[such]~~ the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;
- (7) Propose any reclassification of any land classified as conservation district by the state land use commission under chapter 205; ~~[and]~~
- [f](8)[f] Propose the construction of new[;] or the expansion or modification of existing helicopter facilities within the State, which, by way of their activities, may affect ~~[any]~~:
 - (A) Any land classified as conservation district by the state land use commission under chapter 205; ~~[the]~~
 - (B) The shoreline area as defined in section 205A-41; or~~[-any]~~
 - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or¹ until the statewide historic places inventory is completed, any historic site ~~that~~ is found by a field reconnaissance of the area affected by the helicopter facility and ~~[which]~~ is under consideration for placement on the National Register or the Hawaii Register of Historic Places~~[-]; and~~
- (9) Propose any:
 - (A) Wastewater facility, except an individual wastewater system or a wastewater facility serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;
 - (D) Oil refinery; or
 - (E) Power-generating facility.

(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects ~~[which]~~ that the agency has not approved, adopted, or funded, or other than the use of state or county funds for the acquisition of unimproved real property~~[-which]~~ that is not a specific type of action declared exempt under section 343-6, ~~[that]~~ the agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required.

For environmental assessments for which a finding of no significant impact is anticipated~~[-a]~~:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days[-];
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and ~~[eomments]~~ comment pursuant to section 343-3[-];
- (3) The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required[-];
- (4) A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment[-]; and

- (5) The agency shall file notice of such determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and ~~[comments]~~ comment pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement.

The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement. The final authority to accept a final statement shall rest with:

- (1) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds, or whenever a state agency proposes an action within the categories in subsection (a); or
- (2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by subsection (a) ~~[which]~~ that requires approval of an agency~~[-]~~ and ~~[which]~~ that is not a specific type of action declared exempt under section 343-6, the agency initially receiving and agreeing to process the request for approval shall prepare an environmental assessment of ~~[such]~~ the proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. The final approving agency for the request for approval is not required to be the accepting authority.

For environmental assessments for which a finding of no significant impact is anticipated~~[-a]~~:

- (1) A draft environmental assessment shall be made available for public review and comment for a period of thirty days~~[-]~~;
- (2) The office shall inform the public of the availability of the draft environmental assessment for public review and ~~[comments]~~ comment pursuant to section 343-3~~[-]~~;
- (3) The applicant shall respond in writing to comments received during the review, and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment.

The agency shall file notice of ~~[such]~~ the agency's determination with the office, which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3.

The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office.

The draft statement shall be made available for public review and ~~[comments]~~ comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and ~~[comments]~~ comment pursuant to section 343-3.

The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement.

The authority to accept a final statement shall rest with the agency initially receiving and agreeing to process the request for approval. The final decision-making body or approving agency for the request for approval is not required to be the accepting authority. The planning department for the county in which the proposed action will occur shall be a permissible accepting authority for the final statement.

Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement pursuant to section 343-3.

The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision."

2. By amending subsection (e) to read:

"(e) In preparing an environmental assessment, an agency may consider and, where applicable and appropriate, incorporate by reference, in whole or in part, previous determinations of whether a statement is required and previously accepted statements. The council, by [~~rules,~~] rule, shall establish criteria and procedures for the use of previous determinations and statements."

3. By amending subsection (g) to read:

"(g) A statement that is accepted with respect to a particular action shall satisfy the requirements of this chapter, and no other statement for [~~that~~] the proposed action shall be required."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 5, 2004.)

Note

1. Prior to amendment "", appeared here.

ACT 56

S.B. NO. 3222

A Bill for an Act Relating to Motor Vehicle Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10C-103.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Personal injury protection benefits, with respect to any accidental harm, means all appropriate and reasonable treatment and expenses necessarily incurred as a result of the accidental harm and which are substantially comparable to the requirements for prepaid health care plans, including medical, hospital, surgical, professional, nursing, advanced practice nursing recognized pursuant to chapter 457, dental, optometric, naturopathy, chiropractic, ambulance, prosthetic services, medical equipment and supplies, products and accommodations furnished, x-ray, psychiatric, physical therapy pursuant to prescription by a medical doctor, occupational therapy, rehabilitation, and therapeutic massage by a licensed massage therapist when prescribed by a medical doctor.”

SECTION 2. Section 431:10C-103.6, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-103.6 Personal injury protection benefits tied to prepaid health care plan for description of coverage only. (a) The benefits provided under section 431:10C-103.5 shall be substantially comparable to the requirements for prepaid health care plans, as provided in chapter 393 and rules of the department of labor and industrial relations, pertaining to the Prepaid Health Care Act. The reference to the Prepaid Health Care Act is only for purposes of describing the coverages and exclusions, without regard to any specific insurer or plan, and shall not be construed to transfer coverage to the prepaid health care plans. The precise charges and utilization rates shall be as contained in the workers' compensation schedules as provided under section 431:10C-308.5, unless modified by the commissioner by rule under chapter 91.

(b) Chiropractic treatments shall be allowed for not more than the lesser of the following:

- (1) Thirty visits at no more than \$75 a visit, plus no more than five x-rays at no more than \$50 each; or
- (2) Treatment as defined by the Hawaii State Chiropractic Association guidelines in effect on January 25, 1997.

(c) Acupuncture treatments shall be allowed for no more than thirty visits at no more than \$75 a visit.

(d) Naturopathic treatments shall be allowed for no more than thirty visits at no more than \$75 a visit.

~~[(d)]~~ (e) The combined total of naturopathic, chiropractic, and acupuncture treatments may not exceed thirty visits.

~~[(e)]~~ (f) The benefits under section 431:10C-103.5 may be with copayment, and shall be subject to and apply the utilization requirements applicable under prepaid health care plans, under chapter 393.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 5, 2004.)

ACT 57

H.B. NO. 267

A Bill for an Act Relating to Government.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend laws relating to the office of elections and campaign spending commission. Part I of this Act allows the campaign spending commission and the office of elections:

- (1) To communicate directly with the legislature and the governor, to make all personnel decisions, and purchase equipment without the approval of the department head; and
- (2) To be exempt from collective bargaining under chapter 89, Hawaii Revised Statutes.

Part I also allows the office of elections to hire its own private attorney.

Part II of this Act establishes a commission to oversee the office of elections.

PART I

SECTION 2. Part I of chapter 11, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§11- Exemptions. The office of elections shall be exempt from section 26-35(1), (4), and (5) and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the office of elections without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The office of elections shall follow all applicable personnel laws.”

SECTION 3. Section 11-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~[The]~~ Pursuant to section 11- , the chief election officer may employ a staff without regard to ~~[chapter 76,] chapters 76 and 89 and section 28-8.3. The office of elections staff may, but shall not be limited to [supervise] supervising state elections; [maximize] maximizing~~ registration of eligible voters throughout the State; ~~[maintain] maintaining~~ data concerning registered voters, elections, apportionment, and districting; and to ~~[perform] performing~~ other duties as prescribed by law. The chief election officer or county clerk may employ precinct officials and other election employees as the chief election officer or county clerk may find necessary, none of whom shall be subject to ~~[chapter 76,] chapters 76 and 89.~~”

SECTION 4. Section 11-193, Hawaii Revised Statutes, is amended to read as follows:

“§11-193 Duties of the commission. (a) The duties of the commission under this subpart are:

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
- (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;
- (6) To hold public hearings;
- (7) To investigate and hold hearings for receiving evidence of any violations;
- (8) To adopt a code of fair campaign practices as a part of its rules;
- (9) To establish rules pursuant to chapter 91;
- (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
- (11) To administer and monitor the distribution of public funds under this subpart;
- (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- (13) To employ or contract, without regard to [chapter] chapters 76 and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- (14) To do random audits, field investigations, as necessary;
- (15) To file for injunctive relief when indicated;
- (16) To censure any candidate who fails to comply with the code of fair campaign practices; and
- (17) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign

spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion.

(b) In performing the functions and duties under this subpart, the commission may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects, to the commission office at any place in the State whether or not the subpoena is in connection with any hearing; provided that the person or documents subpoenaed shall be relevant to a matter under study or investigation by the commission. The books, papers, documents, or objects may be retained by the commission for a reasonable period of time for the purpose of examination, audit, copying, testing, and photographing. The subpoena power shall be exercised by the chairperson of the commission, or such other person as the chairperson may designate. Upon application of the commission, obedience to the subpoena shall be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by a circuit court.

(c) The commission shall be exempt from section 26-35(1), (4), and (5) and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The commission shall follow all applicable personnel laws.'

SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;

- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation or any of its facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy; [or]
- (19) By the office of elections;
- (20) By the campaign spending commission; or
- [19] (21) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section."

PART II

SECTION 6. Part I of chapter 11, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

"§11-A Elections commission. (a) There is established an elections commission within the department of accounting and general services for administrative purposes. The elections commission shall consist of nine members who shall be selected as follows:

- (1) The president of the senate shall select two elections commission members;
- (2) The speaker of the house of representatives shall select two elections commission members;
- (3) The senators belonging to a party or parties different from the president of the senate shall designate one senator to select two elections commission members;
- (4) The representatives belonging to a party or parties different from the speaker of the house of representatives shall designate one representative to select two elections commission members; and
- (5) One member, who shall serve as chairperson of the elections commission, shall be selected by the members of the elections commission selected pursuant to paragraphs (1) to (4);

provided that each group of four elections commission members selected by each house shall include one elections commission member from each of the four counties.

(b) The chairperson of the elections commission under subsection (a)(5) shall be selected by a two-thirds vote.

(c) A vacancy in the elections commission shall be filled in the same manner as the original appointment as specified in subsection (a) within fifteen days. A vacancy in the elections commission shall be filled with a person from the same county as the departing elections commission member. Elections commission member vacancies not filled within the times specified shall be filled promptly thereafter by the chief justice of the supreme court.

(d) The elections commission shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law.

(e) Notwithstanding section 26-34, elections commission member appointments shall not be subject to senatorial confirmation.

(f) The term of the elections commissioners shall be four years, except that with respect to the terms of the initial elections commission members, one member selected from each of subsection (a)(1) to (4) shall serve for a term of two years.

(g) The elections commissioners shall serve without compensation, but shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties.

§11-B Duties of the elections commission. The duties of the elections commission are to:

- (1) Hold public hearings;
- (2) Investigate and hold hearings for receiving evidence of any violations and complaints;
- (3) Adopt rules pursuant to chapter 91;
- (4) Employ, without regard to chapter 76, a full-time chief election officer, pursuant to section 11-1.6; and
- (5) Advise the chief election officer on matters relating to elections.

§11-C Elections commission; political activities. (a) No elections commission member shall take an active part in political management or in political campaigns.

(b) Each elections commission member shall retain the right to:

- (1) Register and vote as the elections commission member chooses in any election;
- (2) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (3) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- (4) Make a financial contribution to a political party or organization;
- (5) Serve as an election judge or clerk or in a similar position to perform nonpartisan election duties, as prescribed by law; and
- (6) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the elections commission member's efficiency or integrity as an elections commission member or the neutrality, efficiency, or integrity of the elections commission.

(c) An elections commission member may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics or this section.

§11-D Elections review program. The elections commission shall develop and implement an elections review program to:

- (1) Review the operation and performance of elections;
- (2) Make recommendations to the chief election officer on methods to improve elections;
- (3) Establish policies for the administration of an elections observer program, to include ensuring the validity and reliability of election results;
- (4) Conduct a biennial evaluation of the operation of elections;
- (5) Submit the findings and recommendations from the biennial evaluation to the legislature, not less than twenty days prior to the convening of each regular session held in odd-numbered years; and
- (6) Adopt rules in accordance with chapter 91 to carry out the purposes of this section.

§11-E Exemptions. The elections commission shall be exempt from section 26-35(1), (4), and (5) and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the elections commission without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

The elections commission shall follow all applicable personnel laws.”

SECTION 7. Section 11-1, Hawaii Revised Statutes, is amended by amending the definition of “chief election officer” to read as follows:

““Chief election officer”, the individual appointed by the ~~[elections appointment and review panel]~~ elections commission pursuant to section 11-1.6 to supervise state elections.”

SECTION 8. Section 11-1.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The office of elections shall provide staff support to the ~~[elections appointment and review panel]~~ elections commission, as requested by the ~~[panel]~~ elections commission.”

SECTION 9. Section 11-1.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The chief election officer shall be appointed by the ~~[elections appointment and review panel]~~ elections commission, without regard to chapter 76. The appointment shall not be subject to the advice and consent of the senate. In the event of a vacancy, the ~~[panel]~~ elections commission shall meet expeditiously to select and appoint a new chief election officer to serve the remainder of the unexpired term.”

2. By amending subsections (f) and (g) to read:

“(f) The chief election officer may petition the ~~[panel]~~ elections commission for reappointment. The ~~[panel]~~ elections commission may reappoint an incumbent chief election officer based on the performance ~~[evaluation]~~ of the chief election officer ~~[conducted by the panel]~~. The ~~[panel]~~ elections commission may authorize the chief election officer to hold office until a successor is appointed.

(g) The chief election officer may be removed by the ~~[panel]~~ elections commission at any time for good cause.”

SECTION 10. Section 11-2.5, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 11-2.6, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 11-2.7, Hawaii Revised Statutes, is repealed.

SECTION 13. In codifying the new sections added by section 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 14. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the elections appointment and review panel relating to the functions transferred to the elections commission established

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under section 6 of this Act shall be transferred with the functions to which they relate.

SECTION 15. All rules, policies, and procedures adopted and enforced by the elections appointment and review panel shall remain in full force and effect until such time that the elections commission established under section 6 of this Act may adopt, amend, or repeal such rules, policies, or procedures.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 17. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on May 6, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 58

H.B. NO. 2608

A Bill for an Act Relating to the Hawaii Tourism Authority.

Be It Enacted by the Legislature of the State of Hawaii:

PART 1

SECTION 1. Chapter 201B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§201B- Authority, private attorneys. (a) The board may appoint or retain by contract one or more attorneys who are independent of the attorney general to provide legal services for the board solely in cases of contract negotiations in which the attorney general lacks sufficient expertise; provided that the independent attorney shall consult and work in conjunction with the designated deputy attorney general assigned to the Hawaii tourism authority.

(b) The board may fix the compensation of the attorneys appointed or retained pursuant to this section. Attorneys appointed or retained by contract shall be exempt from chapters 76, 78, and 88.”

SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;

- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation or any of its facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy; [øf]
- (19) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section[-]; or
- (20) By the Hawaii tourism authority, as provided in section 201B- .”

2. By amending subsection (c) to read:

“(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaii tourism authority as provided in section 201B- ., the Hawaiian home lands trust individual claims review panel, or as grand jury counsel, shall be a deputy attorney general.”

SECTION 3. Section 40-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) With respect to the executive branch, except the University of Hawaii, the Hawaii tourism authority, and the department of education, the comptroller shall have complete supervision of all accounts. The comptroller shall preaudit all proposed payments of \$10,000 or more to determine the propriety of expenditures and compliance with executive orders and rules that may be in effect. When necessary, the comptroller shall withhold approval of any payment. Whenever approval is withheld, the department or agency concerned shall be promptly notified. With respect to the University of Hawaii, the Hawaii tourism authority, and the department of education, the comptroller shall issue warrants for the release of funds for the operating costs of the university, the Hawaii tourism authority, or the department of education, as applicable, in amounts and at times mutually agreed upon by the governor or director of finance and the university, the Hawaii tourism authority, or department of education, as applicable; provided:

- (1) The amounts released shall not exceed the allotment ceilings for the respective funding sources of the university’s or the department of education’s appropriations established by the governor for an allotment period pursuant to section 37-34[; and], or in the case of the Hawaii tourism authority, revenues received by the convention center enter-

prise special fund and the tourism special fund pursuant to section 237D-6.5; and

- (2) The comptroller may issue warrants as an advance from the state treasury to the University of Hawaii, the Hawaii tourism authority, and the department of education to establish a checking account and provide working capital in amounts and at times mutually agreed upon by the governor or director of finance and the University of Hawaii, the Hawaii tourism authority, and the department of education.

The University of Hawaii, the Hawaii tourism authority, and the department of education shall preaudit all proposed payments to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii, the Hawaii tourism authority, and the department of education shall make disbursements for operating expenses from the amounts released by the comptroller and maintain records and documents necessary to support those disbursements at times mutually agreed upon by the university president, the executive director of the Hawaii tourism authority, or the superintendent of education, as applicable, and the comptroller; provided that when requested by the university, the Hawaii tourism authority, or department of education, the comptroller shall make all disbursements for the university, the Hawaii tourism authority, or department of education, as applicable, subject to available allotment. Funds released pursuant to this section shall be deposited by the university, the Hawaii tourism authority, or department of education, as applicable, in accordance with the provisions applicable to the director of finance by chapter 38. [Any] Except for moneys deposited by the Hawaii tourism authority in the convention center enterprise special fund pursuant to section 201B-8, and in the tourism special fund pursuant to section 201B-11, any interest earned on the deposit of funds released pursuant to this section shall be deposited in the state treasury at the end of each fiscal year.

SECTION 4. Section 40-4, Hawaii Revised Statutes, is amended to read as follows:

“§40-4 Publication of statements. The comptroller shall prepare and submit to the governor, immediately following the close of each fiscal year, a statement of income and expenditure by funds, showing the principal sources of revenue, the function or purpose for which expenditures were made, together with a consolidated statement showing similar information for all funds; also a statement showing the balance in each fund at the beginning of the fiscal year, plus the receipts, minus the disbursements, and the balance on hand at the close of the fiscal year after deducting outstanding warrants and vouchers. The comptroller may request all agencies, the judiciary, the University of Hawaii, the Hawaii tourism authority, the department of education, and the legislature to provide such information as may be required for the preparation of statements.”

SECTION 5. Section 40-6, Hawaii Revised Statutes, is amended to read as follows:

“§40-6 Approval of business and accounting forms. The comptroller shall determine the forms required to adequately supply accounting and statistical data for the state government. The comptroller shall require heads of departments and establishments of the state government to submit proposed new forms or proposed changes in current business and accounting forms for review and approval before ordering the same printed; except that the University of Hawaii, the Hawaii tourism authority, and the department of education shall be subject to this requirement only

with respect to uniform business and accounting forms of statewide use in the State's accounting system. All standard state forms shall be classified, numbered, and standardized in design, dimensions, color, and grade of paper and recorded in a catalogue of accounting and statistical forms by the comptroller."

SECTION 6. Section 201B-2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The board shall appoint an executive director, exempt from chapters 76, [and] 78, and 88 who shall oversee the authority staff; provided that the compensation package, including salary, shall not exceed [~~fifteen~~] nine per cent of the [~~3.5~~] five per cent authorized for administrative expenses under section 201B-11(c); and provided further that the compensation package shall not include private sector moneys or other contributions. The board shall set the executive director's duties, responsibilities, holidays, vacations, leaves, hours of work, and working conditions. It may grant such other benefits as it deems necessary.

The board may appoint a sports coordinator, exempt from chapters 76, 78, and 88, who shall provide management services for all sporting events supported through the authority."

SECTION 7. Section 201B-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) There is established in the state treasury the tourism special fund, into which shall be deposited:

- (1) A portion of the revenues from any transient accommodations tax, as provided by section 237D-6.5; [and]
- (2) Appropriations by the legislature to the tourism special fund; [and]
- (3) Gifts, grants, and other funds accepted by the authority[.]; and
- (4) All interest and revenues or receipts derived by the authority from any project or project agreements."

2. By amending subsection (c) to read:

"(c) Moneys in the tourism special fund shall be used by the authority for the purposes of this chapter[.]; provided that:

- (1) Not more than [~~3.5~~] five per cent of this amount shall be used for administrative expenses, including \$15,000 for a protocol fund to be expended at the discretion of the executive director; and
- (2) At least \$1,000,000 shall be made available to support efforts to manage, improve, and protect Hawaii's natural environment and areas frequented by visitors."

PART II

SECTION 8. The Hawaii tourism authority was established in 1998 to implement the recommendations of the economic revitalization task force relating to tourism and economic development to coordinate the development, marketing, and research of the tourism industry in a manner consistent with the needs of the State.

The Hawaii tourism authority's initial budget was required to fund eighteen months of the Hawaii visitors and convention bureau's marketing contract (July 1, 1998, to December 31, 1998, and January 1, 1999, to December 31, 1999) with funding for twelve months. This situation caused the authority to use future budgets to make up for the appropriation shortfall, which in the authority's initial budget year amounted to \$27,000,000. This condition continues today, where the fiscal year budgets of the Hawaii tourism authority are inadequate to cover the calendar year contracts for marketing the State of Hawaii.

The purpose of this part is to appropriate funds from the tourism special fund to allow the Hawaii tourism authority to begin correcting this fiscal anomaly.

SECTION 9. There is appropriated out of the tourism special fund the sum of \$8,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 to improve the operational and financial efficiency of the Hawaii tourism authority; provided that the sum appropriated shall be in addition to the sums appropriated out of the tourism special fund in the supplemental appropriations Act or any other Act.

The sum appropriated shall be expended by the Hawaii tourism authority for the purposes of this part.

SECTION 10. The Hawaii tourism authority may amend existing contracts to conform to the purposes of this part.

SECTION 11. The Hawaii tourism authority shall report to the legislature no later than January 15, 2005, on the details of expenditures of moneys appropriated under this part.

SECTION 12. This part shall not be construed to impair any contract existing as of the effective date of this Act.

PART III

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on upon its approval; provided that:

- (1) The amendments made to sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, by part I of this Act shall not be repealed when those sections are reenacted on June 30, 2005, by section 24 of Act 115, Session Laws of Hawaii 1998;
- (2) Part I shall be repealed on June 30, 2007, and sections 28-8.3, 40-1, 40-4, and 40-6, 201B-2, and 201B-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 29, 2005; and
- (3) Section 9 shall take effect July 1, 2004.

(Vetoed by Governor and veto overridden by Legislature on May 6, 2004.)

ACT 59

S.B. NO. 2842

A Bill for an Act Relating to Chapter 846E, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 846E-1, Hawaii Revised Statutes, is amended by amending the definition of “criminal offense against a victim who is a minor” to read as follows:

““Criminal offense against a victim who is a minor” means any criminal offense that consists of:

- (1) Kidnapping of a minor, except by a parent;
- (2) Unlawful imprisonment in the first degree of a minor, except by a parent;
- (3) Criminal sexual conduct toward a minor;

- (4) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
- (5) Use of a minor in a sexual performance; or any crime defined in part VI of chapter 707 involving:
 - (a) Sexual conduct;
 - (b) Attempted sexual conduct; or
 - (c) A proposal to engage in sexual conduct;
- (6) Solicitation of a minor to practice prostitution;
- (7) Any conduct that by its nature is a sexual offense against a minor, but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b) or section 707-732(1)(b), if the perpetrator is eighteen years of age or younger;
- (8) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (7); or
- (9) Any state, federal, or military law similar to paragraphs (1) through (8)."

SECTION 2. Section 846E-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) ~~[Each]~~ In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter for life, each sex offender shall also register in person with the county chief of police having jurisdiction of the area where the sex offender resides or is present. Registration under this subsection is for the purpose of providing the sex offender's photograph, fingerprints, and registration information. Registration under this subsection is required whenever the sex offender, whether or not a resident of this State, [who] remains in [the] this State for more than ten days or for an aggregate period exceeding thirty days in one calendar year[.]. Sex offenders required to register in person with the county chief of police under this subsection shall register within three working days upon:

- (1) Arrival in this State;
- (2) Release from incarceration;
- (3) Release from commitment;
- (4) Release on furlough;
- (5) Placement on parole; or
- (6) Arrival in a county in which the sex offender resides or expects to be present for a period exceeding ten days.

~~[Each sex offender shall register in person with the county chief of police having jurisdiction of the area where the sex offender resides or is present.]~~ In addition to any other requirement to register under this subsection or subsection (a), each sex offender shall report in person every five years to the county chief of police of the county where the sex offender's residence is located for purposes of having a new photograph taken."

SECTION 3. Section 846E-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For purposes of this section, "relevant information that is necessary to protect the public" means:

- (1) Name and all aliases used by the sex offender or under which the sex offender has been known;
- (2) The ~~[street name and zip code]~~ actual address where the sex offender resides and how long the sex offender has resided there;

- (3) The ~~[street name and zip code]~~ actual address where the sex offender is staying for more than ten days, if other than the stated residence;
- (4) The future ~~[street name and zip code,]~~ actual address, if known, where the sex offender is planning to reside, if other than the stated residence;
- (5) The ~~[street name and zip code]~~ actual addresses of the sex offender's current locations of employment;
- (6) Names and legal addresses of current and known future educational institutions with which the sex offender is affiliated as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- (7) The year, make, model, color, and license number of all vehicles currently owned or operated by the sex offender;
- (8) A brief summary of the criminal offenses against victims who were minors and the sexually violent offenses for which the sex offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704; and
- (9) A recent photograph of the sex offender.”

SECTION 4. Section 846E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A sex offender required to register under this chapter, who changes any of the sex offender's registration information after an initial registration with the attorney general, shall notify the attorney general of the new registration information in writing within three working days of the change. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person ~~[resides at a different address for not less than ten days:]~~ is absent from the person's registered residence for ten or more days. If the new residence is in another state that has a registration requirement, the person shall register with the designated law enforcement agency in the state to which the person moves, within the period of time mandated by the new state's sex offender registration laws.”

SECTION 5. Section 846E-9, Hawaii Revised Statutes, is amended to read as follows:

“~~[§846E-9]~~ **Penalty.** **Failure to comply with sex offender registration requirements.** (a) ~~[For a first offense: (1) Any]~~ A person commits the offense of failure to comply with sex offender registration requirements if the person is required to register under this chapter [who] and the person intentionally, knowingly, or recklessly [fails to comply with any of the requirements of this chapter shall be guilty of a misdemeanor; and]:

- (1) Fails to register with the attorney general by providing to the attorney general or the Hawaii criminal justice data center the person's registration information;
- (2) Fails to report in person to the county chief of police of the county where the sex offender's residence is located, for purposes of having a new photograph taken within five years after the previous photograph was taken;
- (3) Fails to register in person with the county chief of police having jurisdiction of the area where the sex offender resides or is present within three working days whenever the provisions of section 846E-2(d) require the person to do so;
- (4) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the sex offender's registration information in writing within three working days of the change;

- (5) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;
- (6) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not accurate and current; or
- (7) Fails to comply with any other requirement of this chapter.
- ~~[(2)]~~ (b) Any person required to register under this chapter who intentionally or knowingly [fails to comply with any requirements of this chapter] violates subsection (a) shall be guilty of a class C felony.
- (c) Any person required to register under this chapter who recklessly violates subsection (a) shall be guilty of a misdemeanor.
- ~~[(b)]~~ (d) For any second or subsequent offense, any person required to register under this chapter who [recklessly,] intentionally, [or] knowingly [fails to comply with any of the requirements of this chapter], or recklessly violates subsection (a) shall be guilty of a class C felony."

SECTION 6. The legislature created a sex offender registry in 1997 (chapter 846E, Hawaii Revised Statutes). In 2001, the Hawaii supreme court held that the public access portion of the law was unconstitutional because it did not provide sex offenders with an opportunity to be heard before their information was posted on the Internet. In 2002 and again in 2003, the legislature amended the law to provide for hearings so that Internet information would once more be available to the public.

In the interim since the enactment of a process by which sex offender information could be placed on the Internet, almost no hearings have been requested. As a result of the supreme court's decision and delays in hearings, there is a backlog of offenders whose information should have been available to the public.

For the sake of processing the nearly two thousand cases waiting to be put on the list, a constitutional amendment has been proposed to:

- (1) Allow the legislature to define what sex offender registration information constitutes registration information to which the public will have access; and
- (2) Decide the manner in which public access to the registration information is obtained.

In anticipation of the enactment of the amendment and before any legislation is enacted pursuant to it, thereto, a task force should be convened to study proposed legislation. The task force should make recommendations to the legislature in the event the constitution is amended. However, should the proposed amendment fail, the task force recommendations need not be implemented since legislation would be unnecessary to effectuate the constitutional amendment. Although the task force may submit its recommendations prior to the enactment of the constitutional amendment, in no way should the creation of the task force be construed to endorse or support the proposed constitutional amendment.

SECTION 7. The judicial council of Hawaii, established pursuant to section 601-4, Hawaii Revised Statutes, shall convene a task force to engage in a comprehensive review of public access to information regarding persons convicted of sexual offenses and to recommend to the legislature amendments, if any, to existing procedures.

The task force shall serve without compensation, and its membership shall comprise a balanced representation of interested parties in the community, which shall include but not be limited to representatives of:

- (1) The judiciary;
- (2) The department of the attorney general;
- (3) The office of the public defender;

- (4) The department of the prosecuting attorney of each county;
- (5) The police department of each county;
- (6) The Hawaii State Bar Association;
- (7) The Hawaii Association of Criminal Defense Lawyers;
- (8) The American Civil Liberties Union of Hawaii;
- (9) Private citizens interested in criminal law and civil liberties;
- (10) Attorneys in private practice involving the criminal law; and
- (11) Victim advocate groups.

The task force shall review the applicable offenses that subject a person to possible publication of registration information under chapter 846E, Hawaii Revised Statutes, and review:

- (1) Standards and criteria that may be required by the federal government in order for Hawaii to receive funding to support registration and publication of information;
- (2) Differing requirements for publication of information throughout the nation;
- (3) Applicable state statutes and rules from jurisdictions other than Hawaii;
- (4) Cost factors involved with various procedures used in other jurisdictions;
- (5) Evaluations of such statutes and procedures and the anticipated impact of enacting similar laws and procedures in Hawaii; and
- (6) Other relevant issues as deemed appropriate for discussion by the task force.

Findings shall provide the legislature with factual information, the national experience, and "best practices" for the purpose of assisting the legislature in determining and developing proposed legislature to ensure:

- (1) The most appropriate identification of offenses that are subject to chapter 846E, Hawaii Revised Statutes;
- (2) The nature, scope, and extent of information to which the public has a right of access;
- (3) The manner of access to the registration information; and
- (4) Any periods of time or procedures by which convicted persons may petition for termination of public access in Hawaii.

Further, findings shall specifically include but not be limited to:

- (1) A compilation of the relevant Hawaii statutes and rules;
- (2) A compilation of the number of cases in each judicial circuit of Hawaii affected by the proposed changes in procedures;
- (3) A compilation of statutes and practices in other jurisdictions; and
- (4) An evaluation of statutes and charging practices and their impact on the administration of justice.

The task force shall also review and evaluate the issue of the lifetime requirement for public access to registration information and shall issue findings that provide the legislature with factual information, the national experience, and "best practices" for the purpose of assisting the legislature in determining whether there is any period for any of the offenses whereby a person may be relieved of a requirement of public access to registration information or request that the person may be relieved of the requirement.

The task force shall report its findings and recommendations to the legislature no later than twenty days before the convening of the regular session of 2005.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 10, 2004.)

ACT 60

H.B. NO. 2789

A Bill for an Act Relating to Sexual Assault.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii to provide that the legislature may define what behavior constitutes a continuing course of conduct in sexual assault crimes and to amend the Hawaii penal code to statutorily define the behavior.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

“SEXUAL ASSAULT CRIMES

Section . The legislature may define what behavior constitutes a continuing course of conduct in sexual assault crimes.”

SECTION 3. The question to be printed on the ballot shall be as follows: “Shall the Constitution of the State of Hawaii be amended to provide that the legislature may define what behavior constitutes a continuing course of conduct in sexual assault crimes?”

SECTION 4. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§707- Continuous sexual assault of a minor under the age of fourteen years. (1) A person commits the offense of continuous sexual assault of a minor under the age of fourteen years if the person:

- (a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and
- (b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.

(2) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts have occurred; the jury need not agree on which acts constitute the requisite number.

(3) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the time frame of the offense charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved, in which case a separate count may be charge for each victim.

(4) Continuous sexual assault of a minor under the age of fourteen years is a class A felony.”

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SECTION 5. Section 707-733.5, Hawaii Revised Statutes, is repealed.

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New constitutional and statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval; provided that the amendment proposed in section 2 to article I of the Constitution of the State of Hawaii shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii; and sections 4 and 5 shall take effect upon ratification of the constitutional amendment proposed in this Act.

(Approved May 10, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 61

H.B. NO. 2254

A Bill for an Act Relating To Chapter 707, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend chapter 707, Hawaii Revised Statutes. Part I of this Act clarifies the definitions for “sexual contact” and “sexual penetration.” Part II of this Act provides greater consistency between the elements constituting the criminal offenses of sexual assault in the second degree and sexual assault in the third degree, when the offense occurs in a correctional facility by an employee against a committed person.

PART I

SECTION 2. The purpose of this part is to clarify the legislature’s intent that the definition of “sexual penetration” includes the acts of cunnilingus and anilingus whether or not actual penetration has occurred. This clarification is necessitated by the Hawaii supreme court’s opinion in *State v. Mueller*, 102 Haw. 391, 76 P.3d 943 (2003), which held that the plain language of the definition of “sexual penetration” required that there be proof of actual penetration for the acts of cunnilingus or anilingus to be encompassed under the definition. The decision in *Mueller* overruled a previous Hawaii supreme court decision, *State v. Rulona*, 71 Haw. 127, 785 P.2d 615 (1990), which had held that it was clear that the act of cunnilingus is an act of “sexual penetration” under the statutory definition of “sexual penetration”, irrespective of whether there was proof of actual penetration.

The legislature finds that this clarification is needed since it is usually difficult for the sexual assault victim to know whether penetration, however slight, occurred during the act of cunnilingus. Moreover, the failure to provide such a clarification would reduce sexual assaults involving acts of cunnilingus or anilingus on children under the age of consent, from sexual assault in the first degree, a class A felony, to sexual assault in the third degree, a class C felony. If reduced to a sexual assault in the third degree, sexual assaults involving cunnilingus or anilingus would

be punished with the same severity as the touching of clothed intimate parts of the minor. The legislature finds that this part is necessary to prevent such an occurrence.

SECTION 3. Section 707-700, Hawaii Revised Statutes, is amended by amending the definitions of "sexual contact" and "sexual penetration" to read as follows:

""Sexual contact" means any touching, other than acts of "sexual penetration", of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

"Sexual penetration" means ~~[vaginal]~~:

- (1) Vaginal intercourse, anal intercourse, fellatio, ~~[cunnilingus, anilingus,]~~ deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required[-]; or
- (2) Cunnilingus or anilingus, whether or not actual penetration has occurred.

For purposes of this chapter, each act of sexual penetration shall constitute a separate offense."

PART II

SECTION 4. Section 707-731, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- "(1) A person commits the offense of sexual assault in the second degree if:
- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
 - (b) The person knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless; or
 - (c) The person, while employed:
 - (i) In a state correctional facility;
 - (ii) By a private company providing services at a correctional facility;
 - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
 - (iv) By a private correctional facility operating in the State of Hawaii; or
 - (v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause."

ACT 61

SECTION 5. Section 707-732, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of sexual assault in the third degree if:
- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
 - (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
 - (c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:
 - (i) The person is not less than five years older than the minor; and
 - (ii) The person is not legally married to the minor[-];
 - (d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;
 - (e) The person, while employed ~~[in a state correctional facility];~~
 - ~~(i)~~ In a state correctional facility;
 - ~~(ii)~~ By a private company providing services at a correctional facility;
 - ~~(iii)~~ By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute; [or]
 - ~~(iv)~~ By a private correctional facility operating in the State of Hawaii[-]; or
 - (v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, [or] a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody, or causes the person to have sexual contact with the actor; or
 - (f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices[-]; provided further that paragraph (e)(v) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.”

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 10, 2004.)

ACT 62

S.B. NO. 2861

A Bill for an Act Relating to Criminal Procedure.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 806, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART INFORMATION CHARGING

§806-A Definitions. In this part, unless a different meaning is plainly required:

“Legal prosecuting officer” means the attorney general or a prosecuting attorney, a deputy attorney general or a deputy prosecuting attorney, or a person designated and authorized by the attorney general or prosecuting attorney to act as a deputy attorney general or deputy prosecuting attorney, respectively.

§806-B Prosecution of felonies by written information. Criminal charges may be instituted by written information signed by a legal prosecuting officer and filed in the court having jurisdiction thereof when the charge is a felony for which charging by written information is permitted by section 806-C.

§806-C Felonies for which criminal charges may be instituted by written information. (a) Criminal charges may be instituted by written information for a felony when the charge is a class C felony under section 19-3.5 (voter fraud); section 128D-10 (knowing releases); section 132D-14(1), (2)(a), and (3), (penalties for failure to comply with requirements of sections 132D-7, 132D-10 and 132D-16); section 134-6 (carrying or use of firearm in the commission of a separate felony); section 134-7(a) and (b) (ownership or possession prohibited); section 134-8 (prohibited ownership); section 134-9 (licenses to carry); section 134-17(a) (relating to false information or evidence concerning psychiatric or criminal history); section 134-51 (deadly weapons); section 134-52 (switchblade knives); section 134-53 (butterfly knives); section 188-23 (possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited); section 231-34 (attempt to evade or defeat tax); section 231-36 (false and fraudulent statements); section 245-37 (sale or purchase of packages of cigarettes without stamps); section 245-38 (vending unstamped cigarettes); section 245-51 (sale of export cigarettes prohibited); section 245-52 (alteration of packaging prohibited); section 291C-12.5 (accidents involving substantial bodily injury); section 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant); section 329-41 (prohibited acts B); section 329-42 (prohibited acts C); section 329-43.5 (prohibited acts related to drug paraphernalia); section 329C-2 (manufacture, distribution, or possession with intent to distribute an imitation controlled substance to a person under eighteen years of age); section 346-34(d)(2) and (e) (fraud involving food stamps or coupons with a value exceeding \$300.00); section 346-43.5 (medical assistance fraud); section 383-141 (falsely obtaining benefits); section 431:10C-307.7 (insurance fraud); section 482D-7 (violation of fitness standards and stamping requirements); section 485-8 (registration of securities); section 485-14 (registration of dealers, investment advisers, salespersons, and investment adviser representatives); section 485-25 (fraudulent and other prohibited practices); section 707-703 (negligent homicide in the second degree); section 707-705 (negligent injury in the first degree); section 707-711 (assault in the second degree); section 707-713 (reckless endangering in the first degree); section 707-721 (unlawful imprisonment in the first degree); section

707-726 (custodial interference in the first degree); section 707-757 (electronic enticement of a child in the second degree); section 707-766 (extortion in the second degree); section 708-811 (burglary in the second degree); section 708-821 (criminal property damage in the second degree); section 708-831 (theft in the second degree); section 708-833.5 (shoplifting); section 708-835.5 (theft of livestock); section 708-836 (unauthorized control of propelled vehicle); section 708-836.5 (unauthorized entry into motor vehicle); section 708-839.5 (theft of utility services); section 708-839.8 (identity theft in the third degree); section 708-852 (forgery in the second degree); section 708-854 (criminal possession of a forgery device); section 708-858 (suppressing a testamentary or recordable instrument); section 708-875 (trademark counterfeiting); section 708-891.5 (computer fraud in the second degree); section 708-892.5 (computer damage in the second degree); section 708-895.6 (unauthorized computer access in the second degree); section 708-8100 (fraudulent use of a credit card); section 708-8102 (theft/forgery of credit cards); section 708-8103 (credit card fraud by a provider of goods or services); section 708-8104 (possession of unauthorized credit card machinery or incomplete cards); section 708-8200 (cable television service fraud in the first degree); section 708-8202 (telecommunication service fraud in the first degree); section 709-903.5 (endangering the welfare of a minor in the first degree); 709-906 (abuse of family or household members); section 710-1016.3 (obtaining a government-issued identification document under false pretenses in the first degree); section 710-1016.6 (impersonating a law enforcement officer in the first degree); section 710-1017.5 (sale or manufacture of deceptive identification document); section 710-1018 (securing the proceeds of an offense); section 710-1021 (escape in the second degree); section 710-1023 (promoting prison contraband in the second degree); section 710-1024 (bail jumping in the first degree); section 710-1029 (hindering prosecution in the first degree); section 710-1060 (perjury); section 710-1072.5 (obstruction of justice); section 711-1103 (riot); section 711-1109.3 (cruelty to animals/fighting dogs); section 711-1110.9 (violation of privacy in the first degree); section 711-1112 (interference with the operator of a public transit vehicle); section 712-1221 (promoting gambling in the first degree); section 712-1222.5 (promoting gambling aboard ships); section 712-1224 (possession of gambling records in the first degree); section 712-1243 (promoting a dangerous drug in the third degree); section 712-1246 (promoting a harmful drug in the third degree); section 712-1247 (promoting a detrimental drug in the first degree); section 712-1249.6 (promoting a controlled substance in, on, or near schools or school vehicles); section 803-42 (interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited); or section 846E-9(a)(2) (penalty for failure to comply with requirements of chapter 846E).

(b) Criminal charges may be instituted by written information for a felony when the charge is a class B felony under section 134-7(b) (ownership or possession prohibited); section 329-43.5 (prohibited acts related to drug paraphernalia); section 708-810 (burglary in the first degree); section 708-830 (theft in the first degree); 708-839.7 (identity theft in the second degree); section 708-851 (forgery in the first degree); section 708-891 (computer fraud in the first degree); section 708-892 (computer damage in the first degree); section 712-1242 (promoting a dangerous drug in the second degree); section 712-1245 (promoting a harmful drug in the second degree); or section 712-1249.5 (commercial promotion of marijuana in the second degree).

(c) Criminal charges may be instituted by written information for a felony when the charge is a felony under section 19-3 (election fraud); section 480-4 (combinations in restraint of trade, price-fixing and limitation of production prohibited); section 480-6 (refusal to deal); or section 480-9 (monopolization).

(d) Criminal charges may be instituted by written information for a felony when the charge is a charge under section 329-46 (prohibited acts related to visits to more than one practitioner to obtain controlled substance prescriptions) and the comparable offense under part IV of chapter 712 as enumerated in subsection (a), (b), or (c).

(e) Criminal charges may be instituted by written information for a felony when the charge is a charge that involves 702-221 (liability for conduct of another), 702-222 (accomplice liability), 702-223 (complicity), 705-500 (criminal attempt), 705-510 (criminal solicitation), or 705-520 (criminal conspiracy), and the underlying offense is an offense listed above in subsection (a), (b), (c), or (d).

§806-D Exhibits. (a) When an offense is prosecuted by information, the legal prosecuting officer shall attach an exhibit demonstrating the existence of probable cause to believe that the offense charged in the information has been committed and that the defendant committed the offense.

(b) The exhibit shall include an affidavit or a declaration made under penalty of law. In addition, the exhibit may include, but is not limited to, documents, photographs, audio recordings, video recordings, other recordings, and other materials or copies thereof.

(c) The legal prosecuting officer shall include within the exhibit evidence that is clearly exculpatory, but no information shall be dismissed for failure to include such evidence if the court finds that the inclusion of the clearly exculpatory evidence would not have changed the finding of probable cause.

(d) Each signed statement of any person whose name appears as a witness in any affidavit or declaration that is part of the exhibit regarding the charged offense shall be made part of the filing if:

- (1) It is in the possession of the legal prosecuting officer, the police, other county or state law enforcement agents; or
- (2) It is in the possession of a federal law enforcement officer and:
 - (A) The legal prosecuting officer is aware of and able to timely obtain the statement; and
 - (B) The statement is one that the legal prosecuting officer would be required to produce in discovery.

(e) Statements made part of the filing pursuant to subsection (d) may be redacted to remove the social security number, address, or phone number of any person.

(f) An information shall not be dismissed for failure to attach or file any such statement described in subsection (d). Any such statement shall be promptly provided to the defendant, or filed with the court if the location of the defendant is unknown or the defendant is without counsel, upon discovery by the legal prosecuting officer.

(g) The information shall be filed in the circuit court, and may be filed under seal with leave of court on good cause shown. All exhibits in support of the information shall be filed under seal in the circuit court.

§806-E Probable cause. (a) When an information is filed, the court having jurisdiction shall review the information and its exhibit to determine whether there is probable cause to believe that the offense charged was committed and that the defendant committed the offense charged.

(b) A finding of the existence of probable cause or lack thereof may be based in whole or in part upon hearsay evidence or upon evidence that may ultimately be ruled to be inadmissible at the trial.

(c) If the court finds that there is probable cause to believe that the offense charged was committed and that the defendant committed the offense charged, the

court shall set bail and direct the clerk to issue a warrant for the arrest of the defendant.

(d) As used in this section, “court having jurisdiction” and “court” mean the circuit court; provided that the chief justice may by order authorize district court judges to make probable cause determinations, set bail, and direct the issuance of arrest warrants, as provided by this section.

§806-F Procedure for motion to dismiss. (a) The defendant may move in circuit court to dismiss the information on the grounds that the information and its exhibit do not establish the existence of probable cause to believe that the offense charged was committed or probable cause to believe that the defendant committed the offense.

(b) Upon the filing of the motion to dismiss, the court shall conduct a hearing within a reasonable time, but no later than thirty days after filing, except as otherwise agreed upon by the parties.

(c) If the defendant is incarcerated the court shall conduct a hearing no later than fifteen days after filing, except as otherwise agreed upon by the parties.

(d) An information shall not be dismissed due to the failure of the court to conduct a hearing within the periods of time stated above; provided, that if the defendant is incarcerated due to an inability to post the previously set bail and a hearing is not held within the specified time period, the court shall immediately hold a hearing to consider whether the defendant should be released upon reasonable conditions set by the court.

(e) The information and all its attachments shall be considered by the court and made a part of the record at a hearing on the motion to dismiss the information.

§806-G Evidence at hearing on motion to dismiss. (a) The defendant may introduce evidence at the hearing. The defendant may also subpoena and call witnesses if the motion is accompanied by a declaration stating that counsel for the defendant (or the defendant if appearing without counsel) has a good faith basis to believe that each witness subpoenaed will provide specific testimony to help demonstrate that the information and its exhibit or exhibits do not establish the existence of probable cause to believe that the offense charged has been committed or probable cause to believe that the defendant committed the offense charged.

(b) The court may, in its discretion, permit the State to call witnesses, introduce evidence, or otherwise supplement the exhibit or exhibits appended to the information.

§806-H Ruling on motion to dismiss. (a) The court shall determine from an examination of the information and its attachments, and in light of any evidence presented at a hearing on a motion to dismiss the information, whether the information and its attachments establish the existence of probable cause to believe that the offense charged has been committed and that the defendant committed the offense charged.

(b) A finding of the existence of probable cause or lack thereof may be based in whole or in part upon hearsay evidence or on evidence that may ultimately be ruled to be inadmissible at the trial.”

SECTION 2. Section 641-13, Hawaii Revised Statutes, is amended to read as follows:

“§641-13 By State in criminal cases. An appeal may be taken by and on behalf of the State from the district or circuit courts to the supreme court, subject to chapter 602, in all criminal cases, in the following instances:

- (1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss, any indictment, information, or complaint or any count thereof;
- (2) From an order or judgment, sustaining a special plea in bar, or dismissing the case where the defendant has not been put in jeopardy;
- (3) From an order granting a new trial;
- (4) From an order arresting judgment;
- (5) From a ruling on a question of law adverse to the State where the defendant was convicted and appeals from the judgment;
- (6) From the sentence, on the ground that it is illegal;
- (7) From a pretrial order granting a motion for the suppression of evidence, including a confession or admission, or the return of property in which case the intermediate appellate court or the supreme court, as the case may be, shall give priority to such an appeal and the order shall be stayed pending the outcome of the appeal;
- (8) From an order denying a request by the State for protective order for nondisclosure of witness for their personal safety under Rule 16(e)(4) of the Hawaii Rules of Penal Procedure, in which case the intermediate appellate court or the supreme court, as the case may be, shall give priority to such appeal and the order shall be stayed pending outcome of such appeal; or
- (9) From a judgment of acquittal following a jury verdict of guilty.”

SECTION 3. Section 806-6, Hawaii Revised Statutes, is amended to read as follows:

“§806-6 Use of; furnishing of copy. In all cases of offenses against the laws of the State brought in the first instance in a court of record, the accused shall be arraigned and prosecuted upon an information, complaint, or indictment as soon after the commitment of the offense of which he is accused as may be expedient.

In ~~[all cases of]~~ felony¹ cases charged by complaint or indictment, the defendant shall be furnished ~~[before arraignment]~~ with a copy of the ~~[complaint or indictment found against him.]~~ charging document before arraignment. In felony cases charged by written information, the defendant shall be furnished with a copy of the information and all attached exhibits at the initial court appearance and the custody of the materials shall be governed by Rule 16 of the Hawaii Rules of Penal Procedure.”

SECTION 4. The prosecuting attorney of each county shall maintain a record of all cases received and prosecuted by way of information between the effective date of this Act and November 30, 2007. A report from the prosecuting attorney of each county, containing a record of the above statistics, shall be submitted to the legislature no later than twenty days prior to the convening of the 2008 regular session.

SECTION 5. In codifying the new part added to chapter 806, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections’ designations in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon the date the chief election officer issues a certificate of election under section 11-156, Hawaii Revised Statutes,

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certifying that the State Constitution has been amended² to allow felony criminal charges to be initiated by the filing of a written information.

(Approved May 10, 2004.)

Notes

1. "Felony" should not be underscored.

2. See SB 2851, this volume, at page 1085, proposing an amendment to Article I of the State Constitution.

ACT 63

S.B. NO. 2424

A Bill for an Act Relating to New Century Conversion Charter Schools.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that civil service employees of department of education schools should not lose civil service status upon conversion of their schools to new century conversion charter schools. The legislature further finds employees who would be granted civil service status if hired by the department of education and who are hired after conversion to new century charter schools should be granted civil service status. Should the new century conversion charter school employees with civil service status transfer to another civil service position, they should be entitled to all of the rights, privileges, and benefits of continuous, uninterrupted civil service.

The purpose of this Act is to preserve and extend civil service rights, privileges, and benefits to certain employees of new century conversion charter schools.

SECTION 2. Section 302A-1184, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1184 New century charter schools; exemptions[-]; civil service status. (a) Schools designated as new century charter schools shall be exempt from all applicable state laws, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
 - (A) The exclusive representatives defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decisionmaking;
 - (B) The exclusive representatives and the local school board of the new century charter school may enter into agreements that contain cost and noncost items;
 - (C) The agreements shall be funded from the current allocation or other sources of revenue received by the new century charter school; and
 - (D) These agreements may differ from the master contracts;
- (2) Discriminatory practices under section 378-2; and
- (3) Health and safety requirements.

New century charter schools shall be exempt from the state procurement code, chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. However, where possible, the new century charter school is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the

exemption of chapter 103D and shall not subject the new century charter school to any other provision of chapter 103D. New century charter schools shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public. In addition, notwithstanding any law to the contrary, as public schools and entities of the State, new century public charter schools shall not bring suit against any other entity or agency of the State of Hawaii.

(b) Civil service employees of department of education schools shall retain their civil service status upon the conversion of their school to a new century conversion charter school. Positions in a new century conversion charter school that would be civil service in a department of education public school shall be civil service positions and subject to chapter 76. An employee with civil service status at a new century conversion charter school who transfers to another civil service position shall be entitled to all of the rights, privileges, and benefits of continuous, uninterrupted civil service."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 11, 2004.)

ACT 64

H.B. NO. 2446

A Bill for an Act Making an Emergency Appropriation for Collective Bargaining Increases.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to appropriate funds to enable payment of collective bargaining increases that were effective January 2003 for department of education employees who are members of bargaining units 1 and 5.

SECTION 3. Wages were increased by four percent effective January 1, 2003 for unit 1, and by three percent effective January 21, 2003 for unit 5. Funding for these mid-year increases was inadvertently omitted from the governor's biennium budget proposal. To correct this omission the governor's proposed fiscal year 2004-2005 supplemental budget has included an increase for the second year of the biennium. An emergency appropriation is needed to fund the increases for the first year of the biennium.

A critical funding emergency exists in fiscal year 2003-2004. The department of education will not have sufficient funds to pay salaries with the current appropriation amount.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,417,636, or so much thereof as may be necessary, for fiscal year 2003-2004.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

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SECTION 5. This Act shall take effect upon its approval.

(Approved May 11, 2004.)

ACT 65

S.B. NO. 2976

A Bill for an Act Making an Emergency Appropriation for the Department of Public Safety.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the Constitution of the State of Hawaii.

SECTION 2. This emergency appropriation is necessary to reduce crowding in Hawaii's correctional facilities by allowing the department of public safety to:

- (1) Contract for additional correctional beds on the mainland and at the federal detention center; and
- (2) Pay for transportation costs to transfer inmates.

As of November 17, 2003, the number of inmates housed in local facilities exceeded the State's operating capacity by twenty-one per cent (four thousand two hundred twenty inmates versus three thousand four hundred eighty-seven beds).

Overcrowding of correctional facilities creates significant challenges for the department of public safety to effectively manage the inmate population. The only viable short-term solution to overcrowding is to expand capacity by increasing the number of contract beds in the federal detention center and mainland correctional facilities.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2003-2004 for additional transportation and necessary operation costs to house inmates in the federal detention center in Honolulu or in mainland correctional facilities.

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 11, 2004.)

ACT 66

H.B. NO. 2354

A Bill for an Act Making an Emergency Appropriation to Risk Management.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to make an emergency appropriation and increase the spending ceiling of the state risk management revolving fund by \$1,550,000, to \$12,000,000 in order to pay for prior year's losses and current losses that would exceed the current spending ceiling and appropriation. The fund shall be expended for the purpose of repairing or replacing damaged or destroyed state facilities.

SECTION 3. There is appropriated out of the state risk management revolving fund the sum of \$1,550,000, or so much thereof as may be necessary, for fiscal year 2003-2004 for the purpose of repairing or replacing damaged or destroyed state facilities. The sum appropriated shall be expended by the department of accounting and general services for the purpose of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 11, 2004.)

ACT 67

H.B. NO. 2397

A Bill for an Act Making an Emergency Appropriation for the Hawaii State Disaster Revolving Loan Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. This emergency appropriation is necessary to allow the expenditure of funds from the disaster revolving loan fund in response to requests from businesses and individuals suffering damages from the heavy rains and flooding on December 7 through December 8, 2003. The governor issued a disaster proclamation on December 23, 2003. Once a proclamation is issued, the department of business, economic development, and tourism may transfer funds from the capital loan revolving fund into the state disaster revolving loan fund.

The purpose of this Act is to appropriate \$1,000,000 for fiscal year 2003-2004 for expenditure from the state disaster revolving loan fund established in section 209-34, Hawaii Revised Statutes.

SECTION 3. There is appropriated out of the state disaster revolving loan fund the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 2003-2004. Loans are authorized from this revolving fund pursuant to the governor's disaster proclamation of December 23, 2003.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 11, 2004.)

ACT 68

S.B. NO. 2556

A Bill for an Act Relating to State Officers and Employees Excluded from Collective Bargaining and Making Appropriations and other Adjustments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There are appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below the following sums or so much thereof as may be necessary for fiscal year 2004-2005 to fund the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees of these agencies excluded from collective bargaining:

	<u>FY 2004-2005</u>
State ethics commission	\$12,000
Office of the auditor	\$82,825
Office of the legislative reference bureau	\$49,728
Office of the ombudsman	\$32,466

The sums appropriated shall be expended by the respective heads of the legislative agencies for the purposes of this Act.

SECTION 2. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid in whole or in part from federal, special, or other funds shall be paid wholly or proportionally, as the case may be, from the respective funds.

SECTION 3. Funds appropriated or authorized by this Act that are not expended or encumbered by the last day of the fiscal year for which they were appropriated or authorized shall lapse as of that date.

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved May 12, 2004.)

ACT 69

S.B. NO. 2897

A Bill for an Act Relating to the Dental Examination.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 447-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Two examinations shall be held in each year at the time the board designates. The examinations shall cover subjects considered essential by the board for a dental hygienist and shall likewise include a practical examination on the removal of deposits or stains from the surfaces of the teeth. The board shall furnish a chair and engine, but the applicant shall supply all necessary instruments, materials, and patients for the examination.

If the board is unable to administer an examination, a qualified applicant for the canceled board examination shall meet the board’s examination requirement if the applicant:

- (1) Within one year prior to the canceled board examination passed a regional or state examination satisfactory to the board; or
- (2) Prior to the board's next administered examination takes and passes a regional or state examination satisfactory to the board."

SECTION 2. Section 448-9, Hawaii Revised Statutes, is amended to read as follows:

"§448-9 Application for examination for graduates of dental colleges accredited by the American Dental Association[.] Commission on Dental Accreditation. Any person of eighteen years or more shall be eligible to take an examination before the board upon submission of:

- (1) An application on a form prescribed by the board to the executive secretary of the board not later than sixty days prior to the date of the scheduled examination;
- (2) Application and examination fees; and
- (3) Documentation and credentials that shall include but are not limited to the following:
 - (A) A diploma or certificate of graduation from a dental college accredited by the ~~[Council of Dental Education of the]~~ American Dental Association~~[.]~~ Commission on Dental Accreditation, recognized and approved by the board; and
 - (B) A certificate or other evidence satisfactory to the board of having passed parts I and II of the ~~[examination of the]~~ National Board ~~[of] Dental [Examiners.] Examination."~~

SECTION 3. Section 448-10, Hawaii Revised Statutes, is amended to read as follows:

"§448-10 Examination; time. ~~[(a)]~~ The board shall require all applicants to take the state written and practical examination on dentistry. In administering the examination the State shall consider current trends in dental education. The requirements for the examination in operative and laboratory dentistry shall be decided by the board and mailed to each applicant. All instruments, materials, and patients shall be supplied by the applicant. Two examinations shall be held each year.

If the board is unable to administer an examination, a qualified applicant for the canceled board examination shall meet the board's examination requirement if the applicant:

- (1) Within one year prior to the canceled board examination passed a regional or state examination satisfactory to the board; or
- (2) Prior to the board's next administered examination takes and passes a regional or state examination satisfactory to the board.

~~[(b) The board shall establish and administer a restorative technique examination to all qualified applicants under section 448-9.5. In administering the examination the State shall consider current trends in dental education. No applicant shall be permitted to take the practical examination under subsection (a) unless the applicant has passed the restorative techniques examination.]"~~

SECTION 4. Section 448-9.5, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

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SECTION 6. This Act shall take effect upon its approval.

(Approved May 12, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 70

H.B. NO. 1560

A Bill for an Act Relating to Disposition of Vessels by the Department of Land and Natural Resources.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 200-16, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment to the department of all fees and costs due, and fines levied by the department or a court. In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered or documented owner or any lien holder or operator¹ of the impounded vessel~~[-]~~ on record with the department or the United States Coast Guard. The owner, lien holder, or operator of the impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The hearing must be held within five working days of the department’s receipt of the written request. The ~~chairperson~~ department shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

(e) Any unauthorized vessel impounded under this section, which remains unclaimed for more than thirty days by the registered or documented owner ~~[or]~~, a lien holder, or operator of record, may be sold by the department at public auction. If the department is unable to sell the vessel at public auction, or if its appraised value is less than ~~[\$250]~~ \$5,000 as determined by an independent appraiser with at least one year of experience in the sale and purchase of vessels, the department, after giving public notice of intended disposition if that notice was not previously included in a public auction notice, may sell the vessel by negotiation, retain and use the vessel, donate it to any other government agency, or dispose of it as junk.”

SECTION 2. Section 200-42, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§200-42**~~]]~~ **Notice to owner.** Upon taking custody of any ~~[such]~~ vessel, a written notice shall immediately be posted on the vessel and a duplicate original ~~[thereof]~~ sent by registered or certified mail, with a return receipt requested, to the ~~[registered]~~ owner registered with the department or documented by the United States Coast Guard or any lien holder or operator of the vessel on record with the department or the United States Coast Guard at ~~[the registered owner's]~~ their respective last known address ~~[and to all lien holders shown on the records of the department.]~~ on record with the department or the United State Coast Guard. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within twenty days after the mailing of the notice. ~~[A notice need not be sent to any purported owner or any other~~

~~person whose interest in the vessel is not recorded with the department.] Such owner, lien holder, or operator, of the vessel shall have ten days after receipt of the mailed notice to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The hearing must be held within five working days of the department's receipt of the written request."~~

SECTION 3. Section 200-44, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~200-44(~~1~~) Possession by interested party. Any person having an interest in the vessel may take possession of the vessel prior to the date of public auction upon payment to the department of all use fees, towing, handling and storage charges, appraisal and advertising expenses, and any other expenses incurred by the department in connection with the vessel. If the person taking possession of the vessel is not the registered or documented owner, the person, prior to taking possession of the vessel, shall pay the foregoing expenses and post security satisfactory to the department which shall not exceed the value of the vessel. The security, if not forfeited, shall be returned to the person posting it within two years after receipt."

SECTION 4. Section 200-45, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~200-45(~~1~~) When public auction not required. Public auction shall not be required when the appraised value of any vessel is less than [~~\$250,~~] \$5,000, as determined by an independent appraiser who has at least one year of experience in the sale or purchase of vessels. Upon that determination, after public notice of intended disposition has been given at least once, the [~~chairperson~~] department may sell the vessel by negotiation, dispose of it as junk, or donate the vessel to any governmental agency."

SECTION 5. Section 200-47, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~200-47(~~1~~) Disposition of proceeds. The department shall deposit that portion of the proceeds of the sale of a vessel [~~as shall represent~~] that represents the mooring or other fees and charges due the department, the expenses of the auction, and any other expense incurred by the department in taking into custody and disposing of an abandoned vessel, derelict vessel, or vessel impounded under section 200-16, into the boating special fund from which the expenses incurred in connection with the [~~abandoned~~] vessel[~~,~~] were paid. The balance, if any, shall be deposited into the general fund of the State. The owner may recover any [~~such~~] balance of the proceeds from the State only if the owner files a claim therefor with the department of budget and finance within one year after the execution of the bill of sale. If no claim is made within the year allowed, the money shall become a state realization. A lien holder shall receive priority in payment from the balance of the proceeds to the extent of the lien holder's lien on the vessel. If the proceeds of the sale are insufficient to cover the mooring and other fees and charges, the expenses of the auction and the other expenses incurred by the department in taking into custody and disposing of the [~~abandoned~~] vessel, the department may bring an action for the deficiency in a court of appropriate jurisdiction against the registered or documented owner or any person who had an interest in the vessel when custody was taken by the department."

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SECTION 6. Section 200-49, Hawaii Revised Statutes, is amended to read as follows:

“§200-49 Disposition of derelict vessel. (a) The chairperson may cause a derelict vessel to be immediately taken into custody. Upon taking custody of a derelict vessel, the ~~[chairperson shall concurrently:]~~ department, as soon as reasonably possible shall:

- (1) Give public notice of intended disposition~~[:]~~ and procedure for requesting an administrative hearing;
- (2) When possible, post a notice of intended disposition and procedure for requesting an administrative hearing on the vessel; and
- (3) Serve a duplicate original of the notice of intended disposition and procedure for requesting an administrative hearing by certified mail, return receipt requested on:
 - (A) The registered or documented owner of the vessel, if known, at the ~~[registered]~~ owner's last known address ~~[or the address]~~ on record with the department or the United States Coast Guard; ~~[and]~~
 - (B) All lien holders who have properly filed a financing statement, referencing the name of the registered or documented owner, in the bureau of conveyances or who are shown on the records of the department or the United States Coast Guard[:]; and
 - (C) Any operator of the vessel on record with the department or the United States Coast Guard.

(b) The owner, lien holder, or operator of the vessel shall have ten days after the date of the public notice or receipt of the mailed notice, whichever occurs later, to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The hearing must be held within five working days of the department's receipt of the written request.

(c) If the vessel is not repossessed within twenty days after the [giving] date of the public notice or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that, when two or more purchasers indicate an interest in purchasing the vessel, the vessel will be sold at public auction to the highest bidder[:], unless the vessel is exempt from public auction under section 200-45. If no purchaser expresses a desire to purchase the vessel, the vessel may be destroyed[:] or donated to any governmental agency.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2004.

(Approved May 13, 2004.)

Note

1. “Operator” should not be underscored.

ACT 71

H.B. NO. 2296

A Bill for an Act Relating to the Use of Credit and Debit Cards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 601-17, Hawaii Revised Statutes, is amended to read as follows:

“§601-17 Use of credit and debit cards to pay for court costs, fees, expenses, and other charges. (a) Costs, fees, bond forfeitures, fines, expenses, and other charges that are due and owing to the courts may be paid by use of credit cards or debit cards acceptable to the administrative director of the courts; provided that ~~[bail postings and]~~ driver’s license and vehicle registration clearances shall be paid by cash only.

(b) A service fee may be paid by the ~~[courts]~~ judiciary for the use of a credit or debit card service. In the event that a credit or debit card is used to pay any charges due and owing to the courts, the judiciary may impose an additional convenience fee on the credit or debit card user. The amount of such convenience fee shall not exceed the amount of the service fee imposed on the judiciary for the subject credit or debit card transaction.”

SECTION 2. Section 804-11, Hawaii Revised Statutes, is amended to read as follows:

“§804-11 One surety sufficient[;]; when. A single surety is sufficient, if the surety offers cash, a credit or debit card authorization, stocks, bonds, or real property in accordance with section 804-11.5[;]; otherwise, there shall be two or more sureties.”

SECTION 3. Section 804-11.5, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“[E]§804-11.5[] Cash, credit and debit card authorization, stocks, bonds, or real property as security for bail. (a) Any person who is permitted to give bail in accordance with section 804-7.4 may secure the bail bond by a deposit, with the clerk of the appropriate court, of:

- (1) Cash or credit or debit card authorization equal to the amount of the bail;
- (2) The unencumbered interest ~~[of]~~ in personal property which has a market value of not less than the amount of the bail bond; or
- (3) Deeds for real property:
 - (A) Situated in this State;
 - (B) Not exempt from attachment or execution under section 651-92;
 - (C) Owned by the person depositing the bail; and
 - (D) Consisting of an unencumbered interest the value of which is at least double the amount of the bail bond.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2004.

(Approved May 13, 2004.)

A Bill for an Act Relating to Condominium Property Regimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 514A-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read as follows:

“(b) The common interest appurtenant to each apartment as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners affected, expressed in an amended declaration duly recorded, except as provided in ~~[section]~~ sections 514A-11(12)[:] and 514A-13.4. An amendment which subdivides or consolidates apartments and reapportions the common interest appurtenant to the subdivided or consolidated apartment shall, to the extent provided in the declaration, require the vote or written consent of only the apartment owners of the subdivided or consolidated apartments, their mortgagees, and such other percentage of apartment owners as the declaration may provide. The common interest shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.”

2. By amending subsection (d) to read as follows:

“(d) Each apartment owner may use the common elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners, subject to:

- (1) The right of the board of directors, upon the approval of the owners of seventy-five per cent of the common interests, except as provided in section 514A-13.4, to change the use of the common elements;
- (2) The right of the board of directors, on behalf of the association of apartment owners, to lease or otherwise use for the benefit of the association of apartment owners those common elements which are not actually used by any of the apartment owners for an originally intended special purpose, as determined by the board of directors; provided that, except for any leases, licenses, or other agreements entered into for the purposes authorized by section 514A-13.4, unless the approval of the owners of seventy-five per cent of the common interest is obtained, any such lease shall not have a term exceeding five years and shall contain a provision that the lease or agreement for use may be terminated by either party thereto on not more than sixty days written notice;
- (3) The right of the board of directors to lease or otherwise use for the benefit of the association of apartment owners those common elements not falling within paragraph (2) ~~[above]~~, upon obtaining:
 - (A) Except as provided in section 514A-13.4, the approval of the owners of seventy-five per cent of the common elements, including all directly affected owners and all owners of apartments to which such common elements are appurtenant in the case of limited common elements[:]; and
 - (B) The approval of all mortgagees of record on apartments with respect to which owner approval is required by subparagraph (A) [above], if such lease or use would be in derogation of the interest of such mortgagees; and
- (4) The exclusive use of the limited common elements as provided in the declaration.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 13, 2004.)

ACT 73

S.B. NO. 3135

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist St. Francis Healthcare System of Hawaii and its Affiliates.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$85,000,000, in one or more series, for the purpose of assisting St. Francis Healthcare System of Hawaii, a Hawaii nonprofit corporation, and one or more of its nonprofit affiliates, to finance the construction, improvement, and equipment of health care facilities, including:

- (1) Refinancing debt;
- (2) Upgrading and modernizing hospital facilities (St. Francis Medical Center and St. Francis Medical Center-West);
- (3) Purchasing new equipment;
- (4) Construction, equipment, and upgrade of dialysis facilities;
- (5) Construction and equipment of new long-term care nursing facilities; and
- (6) Other related projects for St. Francis Healthcare System of Hawaii and its subsidiaries.

The legislature finds and determines that the activities and facilities of St. Francis Healthcare System of Hawaii constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit corporation that provides health care facilities to the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project

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programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 17, 2004.)

ACT 74

S.B. NO. 2551

A Bill for an Act Making an Appropriation for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that on March 25, 2004, the governor, jointly with the president of the University of Hawaii (UH), members of the UH board of regents, and the University of Hawaii professional assembly (UHPA) announced that they had reached an unprecedented six-year collective bargaining contract between the State and the UH professors. Among other things, the contract provided for pay increases equating to raises of over thirty-four per cent over the next six years, with the cost borne entirely by the State for the first three years, and then shared between the State and UH over the last three. Total obligations will be \$124,000,000 to the State and \$39,000,000 to UH.

The legislature further finds that UHPA, the exclusive bargaining representative of bargaining unit (7), reported that the 2003-2009 contract was ratified by its membership on April 7, 2004. Subsequently, on April 16, 2004, the governor transmitted to the legislature the cost items applicable to the ratified contract in accordance with section 89-10(b), Hawaii Revised Statutes.

In the governor's transmittal letter of the cost items, the governor informed the legislature that precedent exists for the approval of appropriations for future fiscal bienniums. Pursuant to Act 63, Session Laws of Hawaii 1994, the legislature authorized appropriations to pay for collective bargaining cost items for fiscal biennium 1993-1995, and authorized the implementation of cost items in fiscal biennium 1995-1997, as provided in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (3).

However, on January 27, 2000, the attorney general opined that due to constitutional limitations, legislative approval of collective bargaining cost items must occur on a biennial basis. Citing article VII, sections 5, 9, and 11 of the State Constitution, the floor debates of the 1978 Constitutional Convention, and *Frost v. State*, 172 N.W.2d 575 (Iowa 1969), the attorney general asserted that, "it is a fundamental principle that one legislature cannot restrict the power of future legislatures to legislate. . . 'The authority of the legislature is limited to the period of its own existence. One general assembly cannot bind a future one.' " (citing *Frost v. State*, supra at 583.)

Furthermore, the attorney general cited Stewart E. Sterk, "The Continuity of Legislatures: Of Contracts and the Contracts Clause," 88 Colum. L. Rev. 647 (1988), when the attorney general clarified that ". . . the reasons for this principle have been explained as:

(1) Legislatures are agents of a constantly changing constituency;

- (2) A current legislature may not adequately account for the interests of future constituents;
- (3) Legislatures are collective bodies requiring a consensus of many individuals; and
- (4) Legislative membership changes at frequent intervals.”

The legislature firmly agrees with these principles and declares that appropriations for collective bargaining cost items can only be approved during the fiscal biennium to which the legislature is constituted.

The purpose of this Act is to provide the necessary appropriations to fund the cost items applicable to the ratified contract with UHPA for fiscal biennium 2003-2005.

PART I

SECTION 2. The purpose of this part is to provide the necessary appropriations or authorization, as the case may be, to allow for the implementation of salary adjustments and other cost items during fiscal biennium 2003-2005, as provided in the agreement with the exclusive bargaining representative of collective bargaining unit (7).

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (7):

	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>Biennium</u>
General funds	\$1,799,551	\$7,628,378	\$9,427,929
Special funds	\$ 20,293	\$ 81,807	\$ 102,100
Other funds	\$ 3,220	\$ 12,973	\$ 16,193

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance in the respective years for the purposes of this part.

PART II

SECTION 5. The purpose of this part is to provide the necessary appropriation or authorization, as the case may be, to allow for the implementation of salary adjustments and other costs items during fiscal biennium 2003-2005 for state officers and employees excluded from collective bargaining.

SECTION 6. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>Biennium</u>
General funds	\$ 206,853	\$ 925,253	\$1,132,106
Special funds	\$ 3,871	\$ 15,589	\$ 19,460

SECTION 7. Funds appropriated or authorized by this part shall be allotted by the director of finance in the respective years for the purposes of this part.

PART III

SECTION 8. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 9. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2005, shall lapse as of that date.

SECTION 10. This Act, upon its approval, shall take effect retroactive to July 1, 2003.

(Approved May 17, 2004.)

ACT 75

S.B. NO. 2550

A Bill for an Act Making an Appropriation for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources and funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal year 2004-2005 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (5):

	<u>FY 2004-2005</u>
General funds	\$26,905,414
Federal funds	\$ 740,909

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments for the purposes of this part.

PART II

SECTION 3. There are appropriated from the source and funding indicated below to program planning, analysis, and budgeting (BUF 101) the following sum, or so much thereof as may be necessary to fund for fiscal year 2004-2005, salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees in the department of education who are excluded from collective bargaining:

	<u>FY 2004-2005</u>
General funds	\$1,319,725
Federal funds	\$ 128,805

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance for the purposes of this part.

PART III

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2005, shall lapse as of that date.

SECTION 7. This Act shall take effect on July 1, 2004.

(Approved May 17, 2004.)

ACT 76

H.B. NO. 2439

A Bill for an Act Relating to Civil Defense Sirens.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature recognizes that civil defense warning or signal devices and sirens are critical to alerting the public to potentially dangerous events and that all efforts should be made to expedite the construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens. The legislature recognizes that the construction, installation, and replacement of civil defense warning or signal devices and sirens is frequently delayed due to permit requirements that on balance are not justified given the vital role these devices or sirens play in providing for the safety of the public. The purpose of this Act is to expedite the construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens by exempting them from the definition of "development" for purposes of coastal zone management.

SECTION 2. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definition of "development" to read as follows:

"Development" means any of the uses, activities, or operations on land or in or under water within a special management area that are included below:

- (1) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
- (2) Grading, removing, dredging, mining, or extraction of any materials;
- (3) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
- (4) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
- (5) Construction, reconstruction, demolition, or alteration of the size of any structure.

"Development" does not include the following:

- (1) Construction of a single-family residence that is not part of a larger development;
- (2) Repair or maintenance of roads and highways within existing rights-of-way;
- (3) Routine maintenance dredging of existing streams, channels, and drainage ways;

- (4) Repair and maintenance of underground utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (5) Zoning variances, except for height, density, parking, and shoreline setback;
- (6) Repair, maintenance, or interior alterations to existing structures;
- (7) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers;
- (8) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (9) Transfer of title to land;
- (10) Creation or termination of easements, covenants, or other rights in structures or land;
- (11) Subdivision of land into lots greater than twenty acres in size;
- (12) Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;
- (13) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
- (14) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible; ~~and~~
- (15) Nonstructural improvements to existing commercial structures; and
- (16) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens;

provided that whenever the authority finds that any excluded use, activity, or operation may have a cumulative impact, or a significant environmental or ecological effect on a special management area, that use, activity, or operation shall be defined as “development” for the purpose of this part.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 17, 2004.)

ACT 77

H.B. NO. 2295

A Bill for an Act Relating to Collections on Delinquent Court-Ordered Payments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 601, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§601- Collection of delinquent court-ordered payments. The judiciary may contract with a collection agency bonded under chapter 443B or with a licensed attorney to collect any delinquent court-ordered penalties, fines, restitution, sanctions, and court costs, including restitution and juvenile monetary assessments.

Any fees or costs associated with the collection efforts shall be added to the amount due and retained by the collection agency as its payment; provided that no such fees or costs shall exceed fifty per cent of the amount collected.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved May 17, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 78

H.B. NO. 2293

A Bill for an Act Relating to Interstate Adult Offender Supervision.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 353-34, Hawaii Revised Statutes, is amended to read as follows:

“~~[§353-34]~~ **Probation services fee; assessment.** Any defendant received for supervision pursuant to ~~[section 353-81]~~ chapter 353B shall be assessed a probation services fee pursuant to section 706-648.”

SECTION 2. Section 706-648, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Any defendant received for supervision pursuant to ~~[section 353-81]~~ chapter 353B shall be assessed a probation services fee pursuant to this section.”

SECTION 3. Chapter 353, part III, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 18, 2004.)

ACT 79

S.B. NO. 1362

A Bill for an Act Relating to Mental Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 321-171.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(a) The department of health shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are seeking employment, or seeking to serve as providers or subcontractors, in positions that place them in direct contact with clients when providing non-witnessed direct mental health

services ~~[on behalf of the child and adolescent mental health division of the department of health]~~. These procedures shall include but not be limited to criminal history record checks in accordance with section 846-2.7.

(b) Except as otherwise specified, any person who seeks employment with the department of health, or who is employed or seeks employment with a provider or subcontractor in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services ~~[on behalf of the child and adolescent mental health division]~~, shall:

- (1) Be subject to criminal history record checks in accordance with section 846-2.7; and
- (2) Provide to the department of health written consent for the department to obtain criminal history record information for verification.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for purposes of determining whether a person is suitable for working in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services ~~[on behalf of the child and adolescent mental health division]~~. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) The department of health may refuse to employ or may terminate the employment of any employee or applicant for employment if the person has been convicted of an offense for which incarceration is a sentencing option, and if the department of health finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of clients receiving non-witnessed direct mental health services. Such refusal or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91. Nothing in this subsection shall abrogate any applicable appeal rights under ~~[chapters]~~ chapter 76 or 89.”

2. By amending the definition of “provider” in subsection (f) to read:

““Provider” means any organization or individual that intends to enter into a contract with or is currently contracted by the ~~[child and adolescent mental health division of the]~~ department of health to provide direct mental health services to the department’s eligible clients.”

SECTION 2. Section 334-3, Hawaii Revised Statutes, is amended to read as follows:

“§334-3 Functions of department in mental health. (a) The department of health within the limits of available funds within the designated programs, shall promote and provide for the establishment and operation of a community-based mental health system responsive to the needs of persons of all ages, ethnic groups, and geographical areas of the State, reflective of an appropriate distribution of resources and services, and monitored and evaluated in terms of standards, goal attainment, and outcomes. The elements of the system shall be defined by departmental rules recognizing the need for at least the following services:

- (1) Informational and educational services to the general public and to lay and professional groups;
- (2) Collaborative and cooperative services with public and private agencies and groups for the prevention and treatment of mental or emotional disorders and substance abuse and rehabilitation of patients;
- (3) Consultation services to the judiciary, to educational institutions, and to health and welfare agencies;
- (4) Case management, outreach, and follow-up services;

- (5) Emergency crisis and noncrisis intervention services accessible to all residents ~~[of all service areas]~~;
- (6) Community-based, relevant, and responsive outpatient services;
- (7) Community residential care comprising a comprehensive range of small, homelike, and appropriately staffed treatment and rehabilitation facilities;
- (8) Short-term psychiatric treatment, preferably in facilities where access to other health and medical services are readily available;
- (9) Intensive psychiatric treatment for patients in need of long-term, highly structured, or highly specialized care and treatment under section 334-2.5, and provision of appropriate community resources;
- (10) Training programs, activities, and staffing standards for the major mental health disciplines and ancillary services; and
- (11) Rehabilitative services for hospital and community-based individuals who have experienced short- or long-term mental or emotional disorders and substance abuse.

(b) The department shall revise, refine, and develop the system to ensure optimal responsiveness to the many and varied needs of the people of the State. The development of the system shall be based on [a] an annual statewide [four-year plan which is developed in response to statewide assessments of need, evaluations of services, programs, and facilities, and community expressions of needed services and programs.] comprehensive integrated service plan that is the cumulative result of comprehensive integrated service area planning within each county. The statewide plan shall determine the specific content of the department of health budget for the mental health system. ~~[The plan shall be annually monitored and updated.]~~

(c) The department shall specifically:

- (1) Perform statewide assessments of the need for prevention, treatment, and rehabilitation services in the areas of mental or emotional disorders and substance abuse;
- (2) Adopt rules pursuant to chapter 91 for establishing the number and boundaries of the geographical service areas for the delivery of services in the areas of mental or emotional disorders and substance abuse. ~~[Each statewide four-year plan shall include a]~~ The department shall periodically review [of] the effectiveness of the geographical service areas in promoting accessibility and continuity of appropriate care to all residents of that geographical area;
- (3) ~~[Establish]~~ Appoint a service area ~~[center]~~ administrator in each ~~[geographical service area that]~~ county who shall be [the focal point] responsible for the development, delivery, and coordination of services in that area;
- (4) Ensure statewide and community-based planning for the ongoing development and coordination of the service delivery system as guided by needs assessment data and performance related information;
- (5) Establish standards and rules for psychiatric facilities and their licensing, where applicable;
- (6) Establish standards and rules for services in the areas of mental health and substance abuse treatment, including assurances of the provision of minimum levels of accessible service to persons of all ages, ethnic groups, and geographical areas in the State;
- (7) Ensure community involvement in determining the service delivery arrangements appropriate to each community of the State;
- (8) Cooperate with public and private health, education, and human service groups, agencies, and institutions in establishing a coordinated system

- to meet the needs of persons with mental or emotional disorders and substance abuse difficulties;
- (9) Evaluate and monitor all services in the fields of mental health and substance abuse where such services are supported fully or in part by state resources;
 - (10) Promote and conduct research, demonstration projects, and studies concerned with the nature, prevention, intervention, and consequences of mental or emotional disorders and substance abuse;
 - (11) Keep records, statistical data, and other information as may be necessary in carrying out the functions of the mental health system and this chapter;
 - (12) Advocate patients' rights in all psychiatric facilities in the State and investigate any grievances submitted to the department by any patient in a psychiatric facility, except as provided in section 334E-2(d). The department shall establish rules and procedures for the purpose of this paragraph within one year after January 1, 1985, and post the rules in a conspicuous manner and accessible place;
 - (13) Promote and conduct a systematic program of accountability for all services provided, funds expended, and activities carried out under its direction or support in accordance with sound business, management, and scientific principles;
 - (14) Coordinate mental health resources in each [service area] county of the State by the development and presentation of [a mental health systems service plan incorporating the planning of each service area.] a comprehensive integrated service area plan developed by the service area administrator in conjunction with the service area board. The service area [center] administrator and the service area board, in collaboration with private and public agencies serving their population, shall submit recommendations for the statewide [four-year plan,] comprehensive integrated service plan, including needs assessment, program planning, resource development, priorities for funding, monitoring, and accountability activities;
 - (15) Oversee and coordinate service area programs and provide necessary administrative and technical assistance to assist service area programs in meeting their program objectives; and
 - (16) Provide staffing to the state council and service area boards to assist in the performance of their functions."

SECTION 3. Section 334-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) The council shall advise the department on allocation of resources, statewide needs, and programs affecting two or more service areas. The council shall review and comment on the [state] statewide comprehensive integrated service plan and shall serve as an advocate for adults with serious mental illness, children with serious emotional disturbances, other individuals with mental illnesses or emotional problems, and individuals with combined mental illness substance abuse disorders."

2. By amending subsection (e) to read:

"(e) The council shall prepare and submit an annual report to the governor and the legislature on implementation of the [state] statewide comprehensive integrated service plan. The report presented to the legislature shall be submitted at least [ten] twenty days prior to the convening of each regular session."

SECTION 4. Section 334-11, Hawaii Revised Statutes, is amended to read as follows:

“§334-11 Service area boards. (a) A service area board shall be established to advise each service area ~~[center.]~~ administrator. Each board shall consist of nine members appointed by the governor, who shall serve for terms to be determined by the governor. After the initial appointees, the governor shall fill each vacancy on a board by appointing a member from a list of four persons submitted by that board, except that, if the board is unable to achieve a quorum at two consecutive meetings called for the purpose of making such a list, the list may be provided by a group of at least seven service area consumers and nonproviders of mental health services. This group shall consist of all board members willing to participate in making the list and other area consumers and nonproviders of mental health services to be selected by the service area board chairperson and service area ~~[center-chief.]~~ administrator. Any meeting called for the purpose of making the list shall be subject to part I of chapter 92. The members of the board shall be service area residents, who are consumers or nonproviders of mental health services and service area providers with a majority being non-state employees and nonproviders of mental health or other health services.

Each board shall elect a chairperson from among its members. All members shall serve without compensation but shall be paid their necessary expenses in attending meetings of the board.

(b) Each service area ~~[center]~~ administrator and board, in consultation with public and private providers, shall participate in the development of comprehensive integrated service area plans and budgets. Each board shall advise ~~[its-center]~~ the service area administrator about service area needs to prevent and treat mental or emotional disorders, combined mental illness substance abuse disorders, and persons afflicted by these disorders, and provide advice, guidance, and recommendations to both the advisory commission on drug abuse and controlled substances, section 329-2, and the state council on mental health, section 334-10, as they deem appropriate.

(c) If a ~~[center-chief's]~~ service area administrator's actions are not in conformance with the board's planning decisions, the ~~[center-chief]~~ service area administrator shall provide a written explanation to the board.”

SECTION 5. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee's conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to section 831-3.1 and section 78-2.7;
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services ~~[on behalf of the child and adolescent mental health division]~~ pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7;

- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to section 378-3(8) and section 302C-1;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to section 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12; and
- (17) The board of directors of an association of apartment owners, or the manager of a condominium project pursuant to section 514A-82.1.”

SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services ~~[on behalf of the child and adolescent mental health division]~~, as provided by section 321-171.5;
- (3) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by ~~[section]~~ 302A-601.5;
- (4) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
- (5) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
- (6) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
- (7) The department of human services on prospective adoptive parents as established under ~~[section]~~ 346-19.7~~[[]]~~;
- (8) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section ~~[346-154]~~~~[[]]~~;

- (9) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section [346-152.5];
- (10) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-E;
- (11) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (12) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (13) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (14) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (15) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302C-1;
- (16) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (17) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7; and
- (18) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 18, 2004.)

ACT 80

H.B. NO. 2385

A Bill for an Act Relating to Access to Vital Statistics Records by Child Support Enforcement Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that state and county agencies need direct access to public health statistics records, commonly referred to as "vital statistics records," maintained by the department of health's office of health status monitor-

ing, to verify and augment their own information on parentage so that they may secure child support for eligible children. The United States Department of Health and Human Services, which provides funding for Hawaii's child support enforcement efforts and oversees the State's compliance with federal child support enforcement laws, requires direct access to these records to fulfill its funding and oversight responsibilities. Direct access to vital statistics records by these agencies will enhance the State's ability to hold parents accountable for the support of their children.

The purpose of this Act is to allow the child support enforcement agency of the State of Hawaii, through the offices of county corporations counsel, county attorneys, or the attorney general, and the federal agency providing funding and oversight for Hawaii's child support enforcement system to have direct access to public health statistics records maintained by the department of health's office of health status monitoring.

SECTION 2. Section 576D-18, Hawaii Revised Statutes, is amended to read as follows:

“§576D-18 Investigators[.]; access to information. (a) The attorney general shall commission child support enforcement investigators who shall have all powers and authority of a police officer or a deputy sheriff to fulfill their official responsibilities; provided that a person so appointed and commissioned shall not carry firearms.

(b) The duties of the commissioned investigators shall be to locate absent parents for the establishment of paternity, and for obtaining and enforcing orders of support.

(c) The agency and other state or territorial agencies administering a program under Title IV-D shall have access, including automated inquiry access, to the records of all entities in the State for information on the employment, compensation, and benefits of any individual member, employee, or contractor of the entity, [in order] to accomplish the purposes of the child support program. The entities include[.] but are not limited to for-profit, nonprofit, and labor organizations, and any agency, board, commission, authority, court, or committee of the State or its political subdivisions, notwithstanding any provision for confidentiality. Subject to safeguards on privacy and confidentiality and subject to the nonliability of entities that afford access under this section, the agency and other state or territorial agencies administering a program under Title IV-D shall also have access to records held by private entities with respect to individuals who owe or are owed support, or against or with respect to whom a support obligation is sought consisting of:

- (1) The names and addresses of individuals and the names and addresses of the employers of such individuals as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized pursuant to section 576E-2; and
- (2) Information, including information on assets and liabilities, on such individuals held by financial institutions.

(d) Other federal, state, and territorial agencies conducting activities under the Title IV-D program shall have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

(e) Notwithstanding section 338-18, the agency, through the offices of county corporation counsels, county attorneys, or the attorney general, shall have access, including automated inquiry access, to the public health statistics records of the department of health and may make only such use of identifying information in those records as is necessary for purposes consistent with Title IV-D and applicable state laws. The United States Secretary of Health and Human Services or the

Secretary's agent, notwithstanding section 338-18, shall also have access, including automated inquiry access, to the public health statistics records of the department of health solely for purposes of funding and oversight under Title IV-D."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 18, 2004.)

ACT 81

H.B. NO. 2337

A Bill for an Act Relating to Name Changes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 574-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The filing fee of [~~\$100~~] \$50 shall accompany the petition when submitted and shall not be refundable.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved May 19, 2004.)

ACT 82

H.B. NO. 2020

A Bill for an Act Relating to Prostitution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, including activities related to prostitution, pornography, sex tourism, and other commercial sexual services. Prostitution and related activities, which are inherently harmful and dehumanizing, contribute to the trafficking in persons, as does sex tourism. The low status of women in many parts of the world has led to a burgeoning of the trafficking industry. Discouraging sex tourism, which is an estimated \$1,000,000,000-per-year business worldwide, is key to reducing the demand for sex trafficking.

While prostitution is illegal in developing nations that are the primary destination of sex tourism, enforcement efforts are lax because of cultural tolerance, sex tourism is a major component of the local economy, laws target female sex workers rather than male customers, economic opportunities for females are limited, and laws are as much a leverage for extorting bribes from those involved in the sex trade as they are a deterrent to its participants. Developed nations from which the demand for sex tourism originates criminalize the practice, but laws apply only to travel for the purpose of engaging in sex with minors and do not specifically target

the licenses of travel agents. Those who patronize sex tours may contract potentially fatal sexually transmitted diseases while overseas and expose their intimate partners to such diseases upon their return.

The purpose of this Act is to promote and protect the human rights of women and girls exploited by sex tourists. It is also the purpose of this Act to promote and protect the health and welfare of women and children in developing nations who may contract sexually transmitted diseases from sex tourists. In so doing, the legislature forcefully declares Hawaii's unequivocal opposition to any form of sex tourism, whether it is child sex tourism or sex tourism involving adults.

This Act is intended to equip licensing officials with the authority to strip travel agents of their registration if they promote sex tourism and to provide prosecutors with the tools necessary to punish travel agents for engaging in this activity. In addition, this Act is intended to equip prosecutors with the tools they need to punish those who promote sex tourism by making it a class C felony to do so.

SECTION 2. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§712- Promoting travel for prostitution. (1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the state.

(2) “Travel services” has the same meaning as in section 468L-1.

(3) Promoting travel for prostitution is a class C felony.”

SECTION 3. Section 468L-7.5, Hawaii Revised Statutes, is amended to read as follows:

“[§]468L-7.5 Prohibited acts. No travel agency or charter tour operator shall engage in any of the following:

- (1) Selling or advertising to sell travel or charter tour services without first registering or renewing a registration with the director under this chapter;
- (2) Conducting business as a registered travel agency or charter tour operator without establishing and maintaining a client trust account, in accordance with sections 468L-5, 468L-5.5, and 468L-24 and the rules relating to travel agencies and charter tour operators;
- (3) Failing to provide evidence of the establishment of a client trust account or to notify the department of the name of the financial institution at which the client trust account is held or of any change in the account number or location within three business days of any change, in accordance with section 468L-5 and the rules relating to travel agencies and charter tour operators;
- (4) Making any false statement, representation, or certification in any application, document, or record required to be submitted, filed, or retained under this chapter;
- (5) Misrepresenting the consumer's right to cancel and to receive an appropriate refund or reimbursement as provided under this chapter;
- (6) Failing to provide a written statement to the consumer containing specific information as required by section 468L-4;
- (7) Failing to provide or otherwise comply with the disclosure requirements of sections 468L-6 and 468L-7;
- (8) Failing to make available to the director such books and records as may be requested by the director pursuant to sections 468L-3(6), 468L-5.5,

and 468L-28 and the rules relating to travel agencies and charter tour operators; [or]

- (9) Promoting travel for prostitution;
- (10) Selling, advertising, or otherwise offering to sell travel services or facilitate travel:
 - (A) For the purpose of engaging in a commercial sexual act;
 - (B) That consists of tourism packages or activities using and offering sexual acts as enticement for tourism; or
 - (C) That provides or purports to provide access to or that facilitates the availability of sex escorts or sexual services;

or

- [(9)] (11) Otherwise violating any of the provisions of this chapter or its rules.

For purposes of paragraph (10):

“Commercial sexual act” means any sexual contact, as defined in section 707-700, for which anything of value is given to or received by any person.

“Sexual act” means any sexual contact as defined in section 707-700.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 19, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 83

S.B. NO. 2377

A Bill for an Act Relating to Privacy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 711-1100, Hawaii Revised Statutes, is amended by amending the definition of “record” to read as follows:

““Record”, for the purposes of sections 711-1110.9 and 711-1111, means to videotape, film, photograph, or archive electronically[-] or digitally.”

SECTION 2. Section 711-1110.9, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law, the person intentionally or knowingly installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place[-, or uses any such unauthorized installation].”

SECTION 3. Section 711-1111, Hawaii Revised Statutes, is amended to read as follows:

“§711-1111 Violation of privacy in the second degree. (1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

- (a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place; [øf]
- (b) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, recording, amplifying, or broadcasting sounds or events in that place other than another person in a stage of undress or sexual activity[, ~~or uses any such unauthorized installation~~]; [øf]
- (c) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein; [øf]
- (d) Covertly records or broadcasts an image of another person’s intimate area underneath clothing, by use of any device, and ~~[such]~~ that image is taken while that person is in a public place and without that person’s consent; [øf]
- (e) Intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this ~~[subsection]~~ paragraph does not apply to:
 - (i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or
 - (ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use; [øf]
- (f) Divulges without the consent of the sender or the receiver the existence or contents of any message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted[,] or if the accused learned of the message or photographic image in the course of employment with an agency engaged in transmitting it; or
- (g) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9.

(2) This section shall not apply to any dissemination, distribution, or transfer of images subject to this section by an electronic communication service provider or remote storage service in the ordinary course of its business. For the purpose of this subsection:

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

“Electronic communication service” means any service that provides to users thereof the ability to send or receive wire or electronic communications.

“Electronic communication service provider” means any person engaged in the offering or sale of electronic communication services to the public.

“Remote storage service” means the provision to the public of computer storage or processing services by means of an electronic communication system.

“Electronic communication system” means any wire, radio, electromagnetic, photo-optical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications, including e-mail, web

hosting, multimedia messaging services, and remote storage services offered by an electronic communication service provider.

[(2)] (3) For the purposes of this section:

“Intimate areas” means any portion of a person’s underwear, pubic area, anus, buttocks, vulva, genitals, or female breast.

“Intimate areas underneath clothing” does not include intimate areas visible through a person’s clothing or intimate areas exposed in public.

“Public place” means an area generally open to the public, regardless of whether it is privately owned, and includes but is not limited to streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses, tunnels, buildings, stores, and restaurants.

[(3)] (4) Violation of privacy in the second degree is a misdemeanor. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 19, 2004.)

ACT 84

H.B. NO. 1828

A Bill for an Act Relating to Public Order.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Urinating and defecating in public frighten and offend many people. These behaviors also create a public health risk because of the spread of diseases and other health hazards stemming from human waste. Such concerns and the smell associated with public urination and defecation discourage people from patronizing establishments located in the downtown business district.

The purpose of this Act is to prohibit public urination or defecation in the downtown Honolulu area.

SECTION 2. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§711- Urinating or defecating in public. (1) A person commits the offense of urinating or defecating in public if the person intentionally or knowingly urinates or defecates in a public place or any area where such an act is likely to be observed by any member of the public within the boundaries of the downtown Honolulu area.

(2) As used in this section:

“Downtown Honolulu area” means the part of the city of Honolulu on the island of Oahu bounded on:

- (a) The south by the sea shore;
- (b) The west by Nuuanu Stream;
- (c) The north by the H-1 freeway; and
- (d) The east by Ward Avenue extended as a straight line to the sea shore.

“Public place” means any publicly-owned or privately-owned property open for public use or to which the public is invited for entertainment or business purposes and includes but is not limited to any street, sidewalk, driveway, alley, doorway, mall, plaza, park, public building, or parking lot.

(3) This section shall not apply in cases where the person failed to use a restroom or other toilet facility because of a medical condition verified by a licensed physician.

(4) This section shall not apply to a person urinating or defecating while using appropriate fixtures in any restroom or other toilet facility designed for the sanitary disposal of human waste.

(5) Urinating or defecating in public is a violation punishable by no more than forty hours of community service work or a fine of not more than \$200.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval and shall be repealed on December 31, 2009.

(Approved May 19, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 85

H.B. NO. 2683

A Bill for an Act Relating to Deferred Acceptance of Guilty Plea and Deferred Acceptance of Nolo Contendere Plea.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“§853-4 Chapter not applicable; when. This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is [a]:
 - (a) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person[;]; or [is-a]
 - (b) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;

- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering;
 - (M) Promoting prostitution in the first degree;
 - (N) Promoting prostitution in the second degree;
 - (O) Promoting prostitution in the third degree;
 - (P) Abuse of family or household members;
 - (Q) Sexual assault in the second degree;
 - (R) Sexual assault in the third degree;
 - (S) A violation of an order issued pursuant to chapter 586.

The court may adopt by rule other criteria in this area."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 2004.)

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. The immediate passage of this bill demonstrates both the governor's resolve and the legislature's commitment to address the retention and morale issues of this bargaining unit through the improved compensation provided by the arbitrated settlement. The settlement is retroactive to July 1, 2003.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 all collective bargaining cost items in the arbitrated settlement for bargaining unit (10):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General Funds	\$4,981,102	\$9,837,246
Special Funds	\$ 74,146	\$ 147,277

SECTION 4. There are appropriated or authorized from the sources of funding indicated below to administration (JUD 601) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 all collective bargaining cost items in the arbitrated settlement for bargaining unit (10):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General Funds	\$71,246	\$139,876

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General Funds	\$170,011	\$338,341

SECTION 6. There is appropriated or authorized from the sources of funding indicated below to administration (JUD 601) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General Funds	\$857	\$1,630

PART III

SECTION 7. Funds appropriated or authorized by each section of this Act to program planning, analysis, budgeting (BUF 101) shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of that section.

SECTION 8. Funds appropriated or authorized by each section of this Act to administration (JUD 601) shall be allotted by the chief justice in the respective fiscal year for the purposes of that section.

PART IV

SECTION 9. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 10. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2004 and June 30, 2005, of the respective fiscal years, shall lapse as of those dates.

SECTION 11. This Act shall take effect upon its approval.

(Approved May 25, 2004.)

ACT 87

H.B. NO. 2871

A Bill for an Act Relating to Tobacco.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that students may be influenced by the sight of school employees and other adults smoking on school grounds and at school functions. Secondhand smoke is also detrimental to the health and well-being of students as well as other school employees. The legislature recognizes that a complete ban on smoking by adults whether parents, supporters, employees on the school campus, or others attending school functions may impose restrictions on prior rights of public employees and reduce participation by parents and supporters at school functions. Furthermore, public employees have a constitutional right to collectively bargain over mandatory subjects, including terms and conditions of employment.

The federal Pro-Children Act provides a clear mandate restricting certain use of tobacco on public school campuses that must be complied with in Hawaii.

The purpose of this Act is to balance the need for a safe and healthy school environment, comply with the federal Pro-Children Act, and recognize the right of public employees to collective bargaining in all permissive areas not controlled by the federal law.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Smoking prohibited; exception. (a) All public schools within the State, from kindergarten through grade twelve, shall prohibit the use of tobacco at public schools or at public school functions.

(b) The department shall provide affected public employees with breaks throughout the work day during which they may smoke at locations off-campus. The number and duration of such breaks shall be subject to collective bargaining.

(c) The department shall provide a smoking cessation program for public employees who are interested in participating; provided that issues relating to the costs of the program shall be subject to collective bargaining.

(d) This section shall not be subject to part II of chapter 328K.”

SECTION 3. Section 89-20, Hawaii Revised Statutes, is amended to read as follows:

“~~[§89-20]~~ Chapter inoperative, when. (a) If any provision of this chapter jeopardizes the receipt by the State or any county of any federal grant-in-aid or other federal allotment of money, the provision shall, insofar as the fund is jeopardized, be deemed to be inoperative.

(b) The federal Pro-Children Act, as it relates to smoking at public school indoor facilities, shall preempt this chapter to the extent the federal act imposes mandatory restrictions on smoking in the workplace.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 25, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 88

S.B. NO. 2899

A Bill for an Act Relating to Nurses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 457-1, Hawaii Revised Statutes, is amended to read as follows:

“§457-1 Purpose. In order to safeguard life and health, any person practicing or offering to practice as an advanced practice registered nurse, a registered nurse, or [as] a licensed practical nurse in this State for compensation[,] shall be required to submit evidence that the person is qualified to so practice, and shall be recognized or licensed as provided in this chapter. It shall be unlawful for any person not recognized or licensed under this chapter to practice or offer to practice nursing as an advanced practice registered nurse, a registered nurse,¹ or [as] a licensed practical nurse; or to use any sign, card, or device, or in any manner [to] indicate or imply that the person is an advanced practice registered nurse, a registered nurse,¹ or a licensed practical nurse.”

SECTION 2. Section 457-7, Hawaii Revised Statutes, is amended to read as follows:

“§457-7 Registered nurses; qualifications; licenses; fees; title; existing licensed nurses; verification of licenses; eligibility. (a) An applicant for a license to practice nursing as a registered nurse shall submit an application on a form prescribed by the board and shall provide written evidence that the applicant has completed a nursing program approved by the [Hawaii] board [of nursing].

(b) Licenses shall be granted either[;] by:

(1) [~~By examination;~~] Examination: The applicant shall be required to pass a written examination in nursing subjects as determined by the board [may determine]. Upon [~~successfully passing~~] the applicant's passage of the examination[;] and compliance with the applicable requirements of this chapter and the rules of the board, the board shall issue to the applicant a license to practice nursing as a registered nurse; or

(2) [~~By endorsement;~~] Endorsement: The board may issue a license to practice nursing as a registered nurse by endorsement to an applicant who has been licensed as a registered nurse under the laws of another state, territory, or foreign country if[;] the applicant has an unencumbered license and, in the opinion of the board, the applicant meets the qualifications required of registered nurses in this State at the time of graduation. Pending verification of a valid, unencumbered license from another state, a temporary permit may be issued for employment with a Hawaii employer.

(c) The applicant applying for a license to practice as a registered nurse by examination shall pay application [and], examination [~~fees to the board~~], and [a] reexamination [~~fee for each reexamination;~~] fees, if applicable, as prescribed by the board. Each applicant who successfully passes the examination shall pay a license fee. The applicant applying for a license to practice as a registered nurse by endorsement shall pay application and license fees.

(d) Any person who holds a license to practice nursing as a registered nurse in this State shall have the right to use the title “Registered Nurse” and the abbreviation “R.N.”. No other person shall assume the title “nurse” or in any manner imply that the person is a nurse except as provided in sections 457-8 and 457-8.5 or use the abbreviation “R.N.” or any other words, letters, signs, or devices to indicate that the person using the same is a registered nurse.

~~[(e) Any person holding a license or certificate of registration to practice nursing as a registered nurse issued by the board which is valid on June 12, 1970, shall be deemed to be licensed as a registered nurse under this chapter.~~

~~[(f) Any person who requests to take the licensing examination to qualify for a license in another state shall pay an examination proctoring fee to the board.~~

~~[(g)]~~ (e) Any person who requests verification of a registered nurse license to a nursing board of another state shall pay a license verification fee.

~~[(h)]~~ (f) Applicants applying for a license to practice as a registered nurse by examination shall submit to the board proof of eligibility. Applicants shall be eligible to apply for a license by examination if they[;] have:

(1) [~~Have graduated~~] Graduated from a registered nursing program at an educational institution in the United States or any territory or possession under the jurisdiction of the United States and are qualified as determined by the board through rules adopted pursuant to chapter 91; or

(2) [~~Have graduated~~] Graduated from a registered nursing program at an educational institution in a foreign jurisdiction, and have had their transcripts evaluated by professional evaluators designated by the board and are considered qualified as determined by the board through rules adopted pursuant to chapter 91.

~~[Graduates of a board-approved registered nursing program at an educational institution in a foreign jurisdiction shall not be required to take the Commission on Graduates of Foreign Nursing Schools examination or an English proficiency examination.]~~

~~[(i)]~~ (g) Unless determined to be insufficient or otherwise invalid by the board, all transcripts, diplomas, certificates of graduation, and other credentials submitted by any applicant in compliance with the application procedures for examination and licensure under this section shall be retained by the board for two years and shall suffice as proof of graduation upon subsequent submittals of applications for reexamination within two years by any applicant."

SECTION 3. Section 457-8, Hawaii Revised Statutes, is amended to read as follows:

"§457-8 Licensed practical nurse; qualifications; license; fees; title; existing licensed nurses; verification of licenses[.]; eligibility. (a) An applicant for a license to practice nursing as a licensed practical nurse shall submit an application on a form prescribed by the board and shall provide written evidence that the applicant has completed a licensed practical nurse program, or its equivalent, approved by the board, and holds a diploma or certificate therefrom.

(b) Licenses shall be granted either[.]: by:

- (1) ~~[By examination:]~~ Examination: The applicant shall be required to pass a written examination in nursing subjects as determined by the board [may determine]. Upon [successfully passing] the applicant's passage of the examination[.] and compliance with the applicable requirements of this chapter and the rules of the board, the board shall issue to the applicant a license to practice nursing as a licensed practical nurse; or
- (2) ~~[By endorsement:]~~ Endorsement: The board may issue a license to practice nursing as a licensed practical nurse by endorsement to any applicant who has been licensed as a licensed practical nurse, or a person entitled to perform similar services under a different title, under the laws of another state, territory, or foreign country if[.]; the applicant has an unencumbered license and, in the opinion of the board, the applicant meets the requirements for licensed practical nurses in this State at the time of graduation. Pending verification of a valid, unencumbered license from another state, a temporary permit may be issued for employment with a Hawaii employer.

(c) The applicant applying for a license to practice as a licensed practical nurse by examination shall pay application ~~[and], examination [fees to the board], and [a] reexamination [fee for each reexamination.] fees, if applicable, as prescribed by the board.~~ Each applicant who successfully passes the examination shall pay a license fee. The applicant applying for a license to practice as a licensed practical nurse by endorsement shall pay application and license fees.

(d) Applicants who have graduated from a practical nursing program at an educational institution in a foreign jurisdiction and are applying for a license to practice as a licensed practical nurse by examination shall submit to the board proof of eligibility. Applicants shall be eligible to apply for a license by examination if they have met the educational requirements prescribed in the rules of the board and have had their transcripts evaluated by professional evaluators designated by the board and are considered qualified as determined by the board through rules adopted pursuant to chapter 91.

~~[(d)]~~ (e) Any person who holds a license to practice nursing as a licensed practical nurse in this State shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.". No other person shall assume the title

“nurse” or in any manner imply that the person is a nurse except as provided in sections 457-7 and 457-8.5 or use the abbreviation “L.P.N.” or any other words, letters, signs, or devices to indicate that the person using the same is a licensed practical nurse.

~~[(e) Any person holding a license to practice nursing as a licensed practical nurse issued by the board which is valid on June 12, 1970, shall be deemed to be licensed as a licensed practical nurse under this chapter.~~

~~[(f) Any person who requests to take the licensing examination to qualify for a license in another state shall pay an examination proctoring fee to the board.~~

~~[(g)] (f) Any person who requests verification of a practical nurse license to a nursing board of another state shall pay a license verification fee.~~

(g) Unless determined to be insufficient or otherwise invalid by the board, all transcripts, diplomas, certificates of graduation, and other credentials submitted by any applicant in compliance with the application procedures for examination and licensure under this section shall be retained by the board for two years and shall suffice as proof of graduation upon subsequent submittals of applications for reexamination within two years by any applicant.”

SECTION 4. Section 457-8.5, Hawaii Revised Statutes, is amended to read as follows:

“§457-8.5 Advanced practice registered nurse; qualifications; recognition; endorsement; fees[-]; eligibility. (a) The board shall grant recognition as an advanced practice registered nurse; provided the nurse has:

- (1) A current, unencumbered license as a registered nurse in this State;
- (2) An unencumbered license as a registered nurse in all other states in which the nurse has a current and active license;
- (3) An unencumbered recognition as an advanced practice registered nurse or similar designation in all other states in which the nurse has a current and active recognition as an advanced practice registered nurse;
- (4) A master’s degree in nursing as specified in rules adopted by the board or a current certification for specialized and advanced nursing practice from a national certifying body recognized by the board; provided that certified nurse midwives shall [have] maintain current certification from a national certifying body recognized by the board; and
- (5) Paid the appropriate fees.

(b) The board shall [grant] require certified nurse midwives to meet the requirements of subsection (a) in order to obtain recognition and maintain recognition as [an] advanced practice registered [nurse to a certified nurse midwife who meets the requirements of subsection (a).] nurses.

(c) [Any] Only a person who has a current, unencumbered recognition from the board to practice as an advanced practice registered nurse shall use the title “Advanced Practice Registered Nurse” and the abbreviation “A.P.R.N.” [-or specialty title and abbreviation in accordance with rules adopted by the board]. No other person shall assume the title “nurse” or in any manner imply that the person is a nurse except as defined in section 457-2 or as provided in sections 457-7 and 457-8 or use the abbreviation “A.P.R.N.” or any other words, letter, sign, or device to indicate that the person using the same is an advanced practice registered nurse. Nothing in this section shall preclude a registered nurse who is not recognized by the board as an advanced practice registered nurse and who is currently certified by a national certifying body recognized by the board from using another title designated by certification.”

SECTION 5. Section 457-8.6, Hawaii Revised Statutes, is amended to read as follows:

“§457-8.6 Prescriptive authority for advanced practice registered nurses. The board shall grant prescriptive authority to qualified advanced practice registered nurses and shall designate the requirements for advanced nursing practice related to prescriptive authority. The board of medical examiners shall submit an annual report of all amendments made to the formularies to the board ~~[of nursing]~~.”

SECTION 6. Section 457-9, Hawaii Revised Statutes, is amended to read as follows:

“§457-9 Renewal of license; denial, suspension, or revocation of license for default of student loan, student loan repayment contract, or scholarship contract. (a) The license of every person licensed ~~[under this chapter]~~, recognized, or granted prescriptive authority shall expire on June 30 of every odd-numbered year and shall be renewed biennially, except as provided in this section. Biennially in each odd-numbered year, the board shall make available an application for renewal of license before the deadline set forth by the board to every person to whom a license was issued or renewed during the biennium. The applicant shall complete the application and submit it to the board with a renewal fee and ~~[any]~~ all required documents on or before the deadline set ~~[forth]~~ by the board. The applicant shall provide documents from proper agencies or parties ~~[relating to]~~ of any criminal conviction or any disciplinary action taken or pending in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States within the two years prior to application for renewal of license. Upon receipt of the application and fee the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the biennium expiring two years hence on the deadline set ~~[forth]~~ by the board. The renewal shall render the holder thereof a legal practitioner of nursing for the period stated on the renewal form.

(b) Any licensee who fails to renew a license as provided in subsection (a) but continues to practice shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter; provided that the person's license may be restored by the board on satisfactory explanation of the failure to renew and on payment of the renewal fee and a penalty fee.

~~[A nurse who fails to renew a license as provided in subsection (a) and does not engage in nursing in the State for one year after the license has been forfeited shall not be required to pay the renewal or penalty fee; provided that the nurse remains inactive during that year.]~~ Should the nurse wish to resume nursing at some future time, the nurse shall notify the board in writing and remit the renewal fee and application form as provided in subsection (a). A nurse who has not actively practiced in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States for more than five years may be required by the board to submit proof of continued competency by retaking and passing the licensing examination.

(c) Notwithstanding any provision in this chapter to the contrary, the board shall not renew or reinstate, or shall deny or suspend, any license or application~~;~~ if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education, or has failed to comply with a repayment plan.

The board in receipt of a certification pursuant to chapter 436C ~~[shall]~~, as applicable, and without further review or hearing~~;~~, shall:

- (1) Suspend the license;
 - (2) Deny the application or request for renewal of the license; or
 - (3) Deny the request for reinstatement of the license,
- and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 7. Section 457-11, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c), to read as follows:

“(a) An institution desiring to conduct a nursing education program to prepare for the practice of nursing advanced practice registered nurses, registered nurses, or licensed practical nurses shall apply to the board and submit evidence that^[:] it is prepared to:

- (1) ~~[It is prepared to carry]~~ Carry out a program in ~~[undergraduate] advanced practice nursing, registered nursing [education or a program in the training of nurses as], or licensed practical [nurses, as the case may be;]~~ nursing; and
- (2) ~~[It is prepared to meet]~~ Meet the standards as shall be established by law and by the board.

(b) ~~[A survey of the institution and its undergraduate or practical nursing program shall be made by the executive secretary or other authorized employee of the board, who shall submit a written report of the survey to the board.]~~ If, in the opinion of the board, the ~~[r]requirements[.]~~ for an approved nursing education program are met, the program shall be approved as a nursing education program for advanced practice, registered, or licensed practical nurses.

(c) The approval standards shall include qualifications necessary for administrators and faculty members of the nursing education program; provided that the standards shall not include a requirement that each individual faculty member receive approval of the board prior to teaching in the program. The qualifications shall be reasonable and relevant to the proper teaching of the practice of nursing. In establishing the qualifications, the board shall consult with the University of Hawaii.”

SECTION 8. Act 192, Session Laws of Hawaii 2002, as amended by Act 3, section 27, Session Laws of Hawaii 2003, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 2002, and shall be repealed on June 30, 2004~~[, except]~~; provided that title 16, chapter 89C, Hawaii administrative rules, shall remain in effect until the board of nursing adopts rules pursuant to section 2 of this Act; and provided further that the amendments made to section 457-8.6, Hawaii Revised Statutes, in section 1 shall [be reenacted in the form in which it read on the day before the effective date of this Act.] not be repealed.”

SECTION 9. The board of nursing shall submit a report to the legislature no later than twenty days prior to the convening of the 2005 regular session with findings resulting from research on the matter relating to the Commission on Graduates of Foreign Nursing Schools examination and the English proficiency examination, their impact on nurse applicants; whether there is data indicating a correlation between requiring either or both examinations and an increase in communication skills at the workplace; and the effect of that requirement on the nurse shortage and licensure.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

ACT 89

SECTION 11. This Act shall take effect upon its approval.

(Approved May 25, 2004.)

Note

1. Comma should be underscored.

ACT 89

S.B. NO. 2983

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to comply with section 235-2.5, Hawaii Revised Statutes, which mandates that the department of taxation submit a bill to each regular session of the legislature that amends Hawaii income tax law to conform with any changes to the Internal Revenue Code.

SECTION 2. Section 231-15.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This section applies to any individual serving in the armed forces of the United States, or serving in support of the armed forces, in an area designated by the President of the United States by Executive Order as a combat zone for purposes of section 112 (with respect to certain combat pay of members of the armed forces) of the federal Internal Revenue Code of 1986, as amended, at any time during the periods designated by the President by Executive Order as the periods of combatant activities in the zone for the purposes of section 112, or when deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the Secretary of Defense as a contingency operation (as defined in section 101(a)(13) of title 10, United States Code) or which became such a contingency operation by operation of law, at any time during the period designated by the President by Executive Order as the period of combatant activities in such zone for purposes of such section or at any time during the period of such contingency operation, or hospitalized as a result of injury received while serving in such [an area] zone or operation during such time.

The period of service in the ~~[zone,]~~ zone or operation, plus the period of continuous qualified hospitalization attributable to the injury, and the next one hundred eighty days thereafter, shall be disregarded in determining in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of the individual:

- (1) Whether any of the following acts was performed within the time prescribed therefor:
 - (A) Filing any tax return (except income tax withheld at source);
 - (B) Payment of any tax (except income tax withheld at source) or any installment thereof or any other liability to the State in respect of such tax;
 - (C) Filing a tax appeal pursuant to chapter 232 or an action to recover moneys paid under protest pursuant to section 40-35(b) if the payment was for tax liability imposed pursuant to this title 14;
 - (D) Allowance of a credit or refund of any tax;
 - (E) Filing a claim for credit or refund of any tax;
 - (F) Bringing suit upon any claim for credit or refund;
 - (G) Assessment of any tax;

- (H) Giving or making any notice or demand for the payment of any tax or with respect to any liability to the State in respect of any tax;
 - (I) Collection by the director, by levy or otherwise, of the amount of any liability in respect of any tax;
 - (J) Bringing suit by the State or any representative of the State on its behalf in respect of any liability in respect of any tax; and
 - (K) Any other act required or permitted under the tax or revenue laws of the State pursuant to rules adopted by the director.
- (2) The amount of any credit or refund.”

SECTION 3. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For all taxable years beginning after December 31, [2002,] 2003, as used in this chapter “Internal Revenue Code” means subtitle A, chapter 1 of the federal Internal Revenue Code of 1986, as amended as of December 31, [2002,] 2003, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal public laws which pursuant to this chapter do not apply or are otherwise limited in application.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.”

SECTION 4. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.4 Operation of certain Internal Revenue Code provisions; sections 63 to 530. (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) \$1,900 in the case of:
 - (A) A joint return as provided by section 235-93; or
 - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (2) \$1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
- (3) \$1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (4) \$950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual’s earned income. Section 63(f) shall not be operative in this State.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a),

except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that provisions in section 163(d)(4)(B) (defining net investment income to exclude dividends) shall not be operative for the purposes of this chapter.

[(d)] (e) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

[(e)] (f) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to property on Indian reservations in section 168(j) and special allowance for certain property acquired after September 10, 2001, and before September 11, 2004, (including the increase and extension of such special allowance to January 1, 2005) in section 168(k) shall not be operative for purposes of this chapter.

(g) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to:

- (1) The increase of the maximum deduction to \$100,000 for taxable years beginning after 2002 and before 2006 in section 179(b)(1);
- (2) The increase of the qualifying investment amount to \$400,000 for taxable years beginning after 2002 and before 2006 in section 179(b)(2);
- (3) Defining section 179 property to include computer software in section 179(d)(1);
- (4) Inflation adjustments in section 179(b)(5); and
- (5) Irrevocable election in section 179(c)(2);

shall not be operative for the purposes of this chapter.

[(f)] (h) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

[(g)] (i) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

[(h)] (j) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that it shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

[(i)] (k) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individ-

ual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

~~[(j)]~~ (l) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

~~[(k)]~~ (m) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(h)]~~ (n) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

~~[(m)]~~ (o) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income.

~~[(n)]~~ (p) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

~~[(o)]~~ (q) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(p)]~~ (r) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that section 529(c)(6) shall not be operative.

~~(q)~~ (s) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2003, except as otherwise provided in this Act.

(Approved May 26, 2004.)

ACT 90

H.B. NO. 2250

A Bill for an Act Relating to Habitual Operation of a Vehicle Under the Influence of an Intoxicant.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286G-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A driver education assessment of \$7 shall be levied on a finding that a violation of a statute or county ordinance relating to vehicles or their drivers or owners occurred, except for:

- (1) Offenses relating to stopping (when prohibited), standing, or parking;
- (2) Offenses relating to registration; and
- (3) Offenses by pedestrians.

In addition, a driver education assessment of \$100 shall be levied on persons convicted under section 291E-61 or 291E-61.5 to defray costs of services provided by the driver education and training program; and \$50 shall be levied on persons required to attend a child passenger restraint system safety class under section 291-11.5.

(b) The driver education assessments levied by subsection (a) shall be paid for each violation in addition to any fine imposed by the court, and regardless of whether a fine is suspended; provided that the driver education assessment of \$100 levied on a person convicted under section 291E-61 or 291E-61.5 may be waived by the court if the court determines that the person is unable to pay the driver education assessment.”

SECTION 2. Section 291E-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “administrative revocation” to read:
““Administrative revocation” means termination of the respondent’s:
(1) License and the privilege to operate a vessel underway on or in the waters of the State pursuant to part III; and
(2) Registration of any motor vehicle registered to a respondent found to be a repeat intoxicated driver,
but does not include any revocation imposed under section 291E-61[.] or 291E-61.5.”

2. By amending the definition of “repeat intoxicated driver” to read:

““Repeat intoxicated driver” means a person who previously:

- (1) Has been convicted, during the five years preceding the date of arrest, of one or more violations under:
 - (A) Section 291E-61[;] or 291E-61.5, as a result of having consumed alcohol; or
 - (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001;
- (2) Has been convicted, during the ten years preceding the date of arrest, of three or more violations under:
 - (A) Section 291E-61[;] or 291E-61.5, as a result of having consumed alcohol; or
 - (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001; or
- (3) Has had one prior alcohol enforcement contact during the five years preceding the date of arrest, two prior alcohol enforcement contacts during the seven years preceding the date of arrest, or three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest.”

3. By amending the definition of “respondent” to read:

““Respondent” means a person to whom a notice of administrative revocation has been issued following an arrest for a violation of section 291E-61 or 291E-61.5 or following the collection of a blood or urine sample from the person, pursuant to section 291E-21, because there was probable cause to believe that the person has violated section 291E-61[;] or 291E-61.5.”

SECTION 3. Section 291E-3, Hawaii Revised Statutes, is amended to read as follows:

“[E]§**291E-3**[E] **Evidence of intoxication.** (a) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5 or in any proceeding under part III:

- (1) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person’s blood;
- (2) .08 or more grams of alcohol per two hundred ten liters of the person’s breath; or
- (3) The presence of one or more drugs in an amount sufficient to impair the person’s ability to operate a vehicle in a careful and prudent manner, within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person’s blood, breath, or urine shall be competent evidence that the person was under the influence of an intoxicant at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 291E-61[;] or 291E-61.5, the amount of alcohol found in the defendant’s blood or breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant’s blood or breath shall be competent evidence concerning whether the defendant was under the influence of an intoxicant at the time of the alleged violation and shall give rise to the following presumptions:

- (1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant’s blood or .05 or less grams of alcohol per two hundred ten liters of defendant’s breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and
- (2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant’s blood or .05 grams of

alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

(c) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291E-61 or 291E-61.5 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence."

SECTION 4. Section 291E-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any:

- (1) Conviction for an offense under section 200-81, 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001;
- (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant; or
- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those sections were in effect on December 31, 2001;

shall be counted as a prior offense for purposes of section 291E-41 [ø], 291E-61[-], or 291E-61.5."

SECTION 5. Section 291E-11, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

"(c) If there is probable cause to believe that a person is in violation of section 291E-64, as a result of being under the age of twenty-one and having consumed a measurable amount of alcohol, or section 291E-61[-] or 291E-61.5, as a result of having consumed alcohol, then the person shall elect to take a breath or blood test, or both, for the purpose of determining the alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section 291E-61[-] or 291E-61.5, as a result of having consumed any drug, then the person shall elect to take a blood or urine test, or both, for the purpose of determining the drug content. Drug content shall be measured by the presence of any drug or its metabolic products, or both.

(e) A person who chooses to submit to a breath test under subsection (c) also may be requested to submit to a blood or urine test, if the law enforcement officer has probable cause to believe that the person was operating a vehicle while under the influence of any drug under section 291E-61 or 291E-61.5 and the officer has probable cause to believe that a blood or urine test will reveal evidence of the person being under the influence of any drug. The law enforcement officer shall state in the officer's report the facts upon which that belief is based. The person shall elect to take a blood or urine test, or both, for the purpose of determining the person's drug content. Results of a blood or urine test conducted to determine drug content also shall be admissible for the purpose of determining the person's alcohol concentra-

tion. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c)."

SECTION 6. Section 291E-21, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) If a health care provider who is providing medical care, in a health care facility, to any person involved in a vehicle collision:

(1) Becomes aware, as a result of any blood or urine test performed in the course of medical treatment, that:

(A) The alcohol concentration in the person's blood meets or exceeds the amount specified in section 291E-61(a)(4)[;] or 291E-61.5(a)(2)(D); or

(B) The person's blood or urine contains one or more drugs that are capable of impairing a person's ability to operate a vehicle in a careful and prudent manner; and

(2) Has a reasonable belief that the person was the operator of a vehicle involved in the collision,

the health care provider shall notify, as soon as reasonably possible, any law enforcement officer present at the health care facility to investigate the collision. If no law enforcement officer is present, the health care provider shall notify the county police department in the county where the collision occurred. If the health care provider is aware of any blood or urine test result, as provided in paragraph (1), but lacks information to form a reasonable belief as to the identity of the operator involved in a vehicle collision, as provided in paragraph (2), then the health care provider shall give notice to a law enforcement officer present or to the county police department, as applicable, for each person involved in a vehicle collision whose alcohol concentration in the person's blood meets or exceeds the amount specified in section 291E-61(a)(4) or 291E-61.5(a)(2)(D) or whose blood or urine contains one or more drugs. The notice by the health care provider shall consist of the name of the person being treated, the blood alcohol concentration or drug content disclosed by the test, and the date and time of the administration of the test. This notice shall be deemed to satisfy the intoxication element necessary to establish the probable cause requirement set forth in subsection (c).

(c) In the event of a collision resulting in injury or death and if a law enforcement officer has probable cause to believe that a person involved in the collision has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291E-61, 291E-61.5, or 291E-64, the law enforcement officer shall request that a sample of blood or urine be recovered from the vehicle operator or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291E-61, 291E-61.5, or 291E-64. If the person involved in the collision is not injured or refuses to be treated for any injury, the law enforcement officer may offer the person a breath test in lieu of a blood or urine test. If the person declines to perform a breath test, the law enforcement officer shall request a blood or urine sample pursuant to subsection (d). The act of declining to perform a breath test under this section shall not be treated as a refusal under chapter 291E and shall not relieve the declining person from the requirement of providing a blood or urine sample under this section."

SECTION 7. Section 291E-32, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~**291E-32**] **Criminal prosecution.** (a) Criminal prosecution under section 291E-61 or 291E-61.5 may be commenced concurrently with administrative revocation proceedings under this part; provided that documentary and testimonial

evidence provided by the respondent during the administrative proceeding shall not be admissible against the respondent in any proceeding under section 291E-61 or 291E-61.5 arising out of the same occurrence.

(b) When a person's license and privilege to operate a vehicle is revoked under this part and the person also is convicted of an offense under section 291E-61 or 291E-61.5 arising out of the same occurrence, the total period of revocation imposed in the two proceedings shall not exceed the longer period of revocation imposed in either proceeding. If the person is convicted under section 291E-61 or 291E-61.5 prior to completion of administrative proceedings, the person shall surrender the temporary permit issued under this part at the time of entry of a plea of guilty or no contest, entry of a verdict of guilty, or of sentencing, whichever occurs first."

SECTION 8. Section 291E-33, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Whenever a person is arrested for a violation of section 291E-61 or 291E-61.5 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for alcohol concentration, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test, a blood test, or both, pursuant to section 291E-11. In the case of a drug related offense, the person shall elect to take a blood test, a urine test, or both, pursuant to section 291E-11. The law enforcement officer also shall inform the person of the sanctions under section 291E-41, including the sanction for refusing to take a breath, blood, or urine test. Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(b) Whenever a law enforcement officer determines that, as the result of a blood or urine test performed pursuant to section 291E-21, there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291E-61[,] or 291E-61.5, the law enforcement officer immediately shall take possession of any license held by the person and shall complete and issue to the person a notice of administrative revocation and indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit unless, at the time the notice was issued: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession."

SECTION 9. Section 291E-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation:

- (1) The statutory authority for administrative revocation;

- (2) An explanation of the distinction between administrative revocation and a suspension or revocation imposed under section 291E-61[i] or 291E-61.5; and
- (3) That criminal charges filed pursuant to section 291E-61 or 291E-61.5 may be prosecuted concurrently with the administrative action.”

SECTION 10. Section 291E-36, Hawaii Revised Statutes, is amended to read as follows:

“§291E-36 Documents required to be submitted for administrative review; sworn statements. (a) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and submits to a test that establishes: the respondent’s alcohol concentration was .08 or more; the presence, in the respondent’s blood or urine, of any drug that is capable of impairing the respondent’s ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent’s alcohol concentration was .08 or more or establishes the presence in the respondent’s blood or urine of any drug that is capable of impairing the respondent’s ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
 - (C) The respondent was informed of:
 - (i) The sanctions of section 291E-41;
 - (ii) The possibility that criminal charges may be filed; and
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content; and
 - (D) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
 - (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:

- (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
- (B) The person followed the procedures established for conducting the test;
- (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
- (D) The person whose breath or blood was tested is the respondent;
- (4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use in drug testing;
 - (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
 - (D) The person whose blood or urine was tested is the respondent;
- (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
- (7) Any license, and motor vehicle registration and number plates if applicable, taken into possession by the law enforcement officer; and
- (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.
- (b) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:
 - (1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
 - (C) The respondent was informed of:
 - (i) The sanctions of section 291E-41;
 - (ii) The possibility that criminal charges may be filed; and
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and

- (D) The respondent refused to be tested;
- (2) A copy of the notice of administrative revocation issued to the respondent;
- (3) Any driver's license, and motor vehicle registration and number plates if applicable, taken into possession; and
- (4) A listing of all alcohol and drug enforcement contacts involving the respondent."

SECTION 11. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The periods of administrative revocation with respect to a license and privilege to operate a vehicle, and motor vehicle registration if applicable, that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year revocation of license and privilege to operate a vehicle, if the respondent's record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) A minimum of one year up to a maximum of two years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (3) A minimum of two years up to a maximum of four years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows two prior alcohol enforcement contacts or drug enforcement contacts during the seven years preceding the date the notice of administrative revocation was issued;
- (4) Lifetime revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or
- (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61[;] or 291E-61.5, revocation of license and privilege to operate a vehicle either for the period remaining until the respondent's eighteenth birthday or, if applicable, for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection (d), whichever is longer and such respondents shall not qualify for a conditional permit;

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later."

SECTION 12. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding any other law to the contrary, any:

- (1) Conviction under this section [~~or~~], section 291E-4(a)[;], or section 291E-61.5;

- (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant[;] or habitually operating a vehicle under the influence of an intoxicant; or
- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a)[;], or section 291E-61.5;

shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this section."

SECTION 13. Section 291E-61.5, Hawaii Revised Statutes, is amended to read as follows:

“[H]§291E-61.5[)] Habitually operating a vehicle under the influence of an intoxicant. (a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

- (1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and
- (2) The person operates or assumes actual physical control of a vehicle:
 - (A) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
 - (B) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
 - (C) With .08 or more grams of alcohol per two hundred ten liters of breath; or
 - (D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) For the purposes of this section:

“Convicted three or more times for offenses of operating a vehicle under the influence” means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within ten years of the instant offense:

- (1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001[;], or section 291E-61 or 707-702.5;
- (2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or
- (3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or

section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

A person has the status of a "habitual operator of a vehicle while under the influence of an intoxicant" if the person has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

(c) Habitually operating a vehicle while under the influence of an intoxicant is a class C felony.

(d) For a conviction under this section, the sentence shall be either:

- (1) An indeterminate term of imprisonment of five years; or
- (2) A term of probation of five years, with conditions to include:
 - (A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
 - (B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;
 - (C) Referral to a certified substance abuse counselor as provided in section 291E-61(d); and
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund.

(e) Whenever a court sentences a person under this section, it shall also require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(f) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until expiration of the period of revocation determined by the court. After the period of revocation is complete, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(g) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

(h) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2."

SECTION 14. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to part III or section 291E-61[5] or 291E-61.5, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

- (1) In violation of any restrictions placed on the person's license; or

- (2) While the person's license or privilege to operate a vehicle remains suspended or revoked."

SECTION 15. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on September 1, 2004.

(Approved May 26, 2004.)

ACT 91

H.B. NO. 2569

A Bill for an Act Relating to Niihau Shell Products.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 486, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§486- Ni'ihau shells; representing content. (a) For the purposes of this section, "Ni'ihau shells" means seashells harvested from the island of Ni'ihau, its waters, or its beaches.

(b) Except as provided herein, no person shall offer, display, expose for sale, or solicit for sale any product or jewelry item fabricated, processed, or manufactured with seashells, that is described, labeled, or identified using the term "Ni'ihau" or "Niihau", either alone or in conjunction with other words, or in a trade or brand name, unless:

(1) One hundred per cent of all shells in the product or jewelry item are Ni'ihau shells; and

(2) The product or jewelry item is fabricated, processed, or manufactured entirely within this State.

(c) Any product or jewelry item that consists of at least eighty per cent Ni'ihau shells, by count, and that meets the requirement of subsection (b)(2), may be described, labeled, or identified using the term "contains", followed immediately by the nearest whole number representing the percentage of Ni'ihau shells, by count, contained in the product or jewelry item, followed by the term, "% Ni'ihau shells" or "% Niihau shells".

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved May 28, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 92

H.B. NO. 2674

A Bill for an Act Relating to Identity Theft.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The 2004 Annual Report of the Federal Trade Commission (FTC) reports that identity theft is the number one consumer complaint, accounting for forty-two per cent of all complaints filed with the FTC in 2003. In 2003, Hawaii ranked twenty-fifth among the states in the number of identity theft victims, with almost fifty-two victims per one hundred thousand population. As many as six hundred forty-nine Hawaii consumers reported complaints about identity theft to the FTC. However, the true number of Hawaii victims may be far more than reported because many victims do not report claims to the FTC.

Hawaii consumers primarily complained about credit or charge card fraud, bank fraud, and phone or utilities fraud. Examples of credit or charge card and bank fraud included establishing new accounts or accessing existing accounts with the victim's identity. Bank fraud also included theft through electronic fund transfers. Utilities fraud typically involved establishing new accounts, such as wireless telephone accounts, with the victim's identity. Hawaii consumers also complained about forged government documents, such as driver's licenses, social security cards, tax returns, and loans obtained with the victim's identity.

Nearly one third of the victims lived in Honolulu. Most of the remaining victims lived in Kaneohe, Kailua, Mililani, Wahiawa, and Waipahu. About seventy-five per cent of the Hawaii victims are between eighteen to forty-nine years of age.

The legislature finds that identity theft is a serious problem for consumers. The legislature finds that one important step toward protecting consumers from identity theft is by protecting against the use and disclosure of social security numbers. The social security number is a unique identifier that is used in conjunction with other personal information for many purposes, including obtaining credit or loans, opening financial accounts, and even enrolling in school.

The purpose of this Act is to:

- (1) Ensure that social security numbers are exempt from disclosure in documents that are otherwise public records; and
- (2) Prohibit retail merchant club card issuers from requesting personal identifiers, such as social security numbers, driver's license numbers, and birth dates except in limited circumstances and restricting their use of consumer information.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
RETAIL MERCHANT CLUB CARDS**

§ -1 Definitions. For purposes of this chapter:

“Cardholder” means any consumer to whom a retail merchant club card is issued, and may include all persons holding the club card under the same account.

“Cardholder information” means the cardholder's name, mailing address, electronic mail address, and any unique membership identifiers assigned by the club card issuer to the cardholder for purposes of targeting marketing activities.

“Club card” means any card or device used for the purpose of obtaining access to purchase retail products through membership, for price discounts, or to

receive other no-cost benefits provided by the retail merchant. A “club card” is not a credit card, charge card, or check cashing card.

“Club card issuer” means a retail merchant that provides club cards to consumers, and includes a contract information services provider of the retail merchant.

“Marketing purposes” means the categorization of cardholders based on the cardholder’s shopping patterns, spending history, or behavioral characteristics derived from account activity that is provided to an unaffiliated third party for consideration.

“Personal information” means information associated with an actual person that is a name, an address, a telephone number, an electronic mail address, a driver’s license number, a social security number, an employer, a place of employment, information related to employment, an employee identification number, a mother’s maiden name, an identifying number of a depository account, a bank account number, a password used for accessing information, a taxpayer identification number, health insurance identification number, date of birth, a personal identification number (PIN), a government passport number, credit card number, or any other name, number, or code that is used to access personal financial information about the actual person.

“Retail merchant” means any retailer that sells food, products, or merchandise.

“Unaffiliated third party” means a business that is not under the corporate control or common ownership of the club card issuer or is not a contract information services provider of the retail merchant.

§ -2 Retail merchant club cards; requirements. (a) No club card issuer shall request in a club card application, or require as a condition of obtaining a club card, that the applicant provide any personal information except name, address, and telephone number. If the club card issuer requires a unique identifier to confirm the identity of the applicant, the club card issuer may ask for the last four digits of the applicant’s social security number.

(b) No club card issuer may sell or share a cardholder’s name, address, telephone number, or any personal information to any unaffiliated third party except as permitted in this subsection. A club card issuer may share cardholder information for marketing purposes if the club card issuer complies with all the following:

- (1) The club card issuer charges an annual fee for the club card and requires the cardholder to renew the club card annually;
- (2) The club card issuer allows only cardholders to make purchases and not members of the general public;
- (3) The club card issuer provides a written statement to the cardholder upon payment of the annual fee that notifies the cardholder that:
 - (A) The cardholder information may be shared with other businesses for purposes of marketing information;
 - (B) Payment of the annual fee means the cardholder has agreed to allow the club card issuer to share cardholder information; and
 - (C) The cardholder may choose to opt-out from the sharing of cardholder information; and
- (4) The club card issuer obtains a written confidentiality agreement from the unaffiliated third party that the shared information will not be transferred to any other entity.

(c) The restrictions of subsection (a) shall not apply when the club card application form is used for the dual purpose of club card membership and establishing privileges for check cashing, check verification, or as a credit application; provided that no club card issuer shall require as a condition of obtaining a club card

that the cardholder obtain the club card as an identification card for purposes of check cashing or credit.

(d) Nothing in this section prohibits a club card issuer from including on its club card application form a credit application to a designated credit card company and transmitting the credit application to the credit card company, provided that:

- (1) The credit application form is separately identified as an option on the club card application form; and
- (2) The credit application clearly discloses that the cardholder is applying for credit with the designated credit card company.”

SECTION 3. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any other law to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases;
- (3) Government purchasing information, including all bid results, except to the extent prohibited by section 92F-13;
- (4) Pardons and commutations, as well as directory information concerning an individual’s presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;
- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll records on public works contracts[;] except that social security numbers of individuals shall not be disclosed;
- (10) Regarding contract hires and consultants employed by agencies:
 - (A) ~~[the]~~ The contract itself, the amount of compensation[;];
 - (B) ~~[the]~~ The duration of the contract[;]; and
 - (C) ~~[the]~~ The objectives of the contract;
- (11) Building permit information within the control of the agency;
- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (but only the salary range for employees covered by or included in chapter 76, and sections 302A-602 to 302A-640, and 302A-701, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this paragraph shall not require the creation of a roster of employees; and provided further that this paragraph shall not apply to information regarding present or former

employees involved in an undercover capacity in a law enforcement agency;

- (15) Information collected and maintained for the purpose of making information available to the general public; and
- (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.”

SECTION 4. Section 92F-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following are examples of information in which the individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;
 - (2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
 - (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;
 - (4) Information in an agency’s personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except:
 - (A) Information disclosed under section 92F-12(a)(14); and
 - (B) The following information related to employment misconduct that results in an employee’s suspension or discharge:
 - (i) The name of the employee;
 - (ii) The nature of the employment related misconduct;
 - (iii) The agency’s summary of the allegations of misconduct;
 - (iv) Findings of fact and conclusions of law; and
 - (v) The disciplinary action taken by the agency;
- when the following has occurred: the highest non-judicial grievance adjustment procedure timely invoked by the employee or the employee’s representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision; provided that this subparagraph shall not apply to a county police department officer except in a case which results in the discharge of the officer;
- (5) Information relating to an individual’s nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;
 - (6) Information describing an individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit-worthiness;
 - (7) Information compiled as part of an inquiry into an individual’s fitness to be granted or to retain a license, except:
 - (A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;
 - (B) Information on the current place of employment and required insurance coverages of licensees; and
 - (C) The record of complaints including all dispositions; [and]
 - (8) Information comprising a personal recommendation or evaluation[-]; and
 - (9) Social security numbers.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; except that section 2 shall take effect on July 1, 2005.

(Approved May 28, 2004.)

ACT 93

S.B. NO. 2839

A Bill for an Act Relating to Solicitation of Funds for Charitable Purposes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 467B, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§467B- Professional solicitor financial reports; contribution account. (a) Within ninety days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred. This report shall be signed and sworn to by the authorized contracting agent for the professional solicitor and two authorized officials of the charitable organization. A professional solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The date and amount of each contribution received and the name and address of each contributor;
- (2) The name and residence of each employee, agent, or other person involved in the solicitation;
- (3) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and
- (4) The location and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the solicitation campaign.

(b) Any material change in any information filed with the attorney general pursuant to this section shall be reported in writing by the professional solicitor to the attorney general not more than seven days after the change occurs.

(c) Each contribution in the control or custody of the professional solicitor, in its entirety and within five days of its receipt, shall be deposited in an account at a bank or other federally insured financial institution, which shall be in the name of the charitable organization. The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals.

§467B- Administrative enforcement and penalties. (a) The attorney general may refuse to register, may revoke, or may suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or an agent, servant, or employee thereof:

- (1) Has violated or is operating in violation of any provision of this chapter, the rules of the attorney general, or an order issued by the attorney general;
 - (2) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this chapter or the rules of the attorney general; or
 - (3) Has made a material false statement in an application, statement, or report required to be filed under this chapter.
- (b) When the attorney general finds that the registration of any person may be refused, suspended, or revoked under the terms of subsection (a), the attorney general may:
- (1) Revoke a grant of exemption from any provisions of this chapter;
 - (2) Issue an order directing that the person cease and desist specified fundraising activities;
 - (3) Impose an administrative fine not to exceed \$1,000 for each act or omission that constitutes a violation of this chapter and an additional penalty, not to exceed \$100, for each day during which the violation continues. Registration shall be automatically suspended upon final affirmation of an administrative fine until the fine is paid or until the normal expiration date of the registration. No registration shall be renewed until the fine is paid; or
 - (4) Place the registrant on probation for such period of time and subject to such conditions as the attorney general may determine.
- (c) All actions of the attorney general shall be taken subject to the right of notice, hearing, and adjudication and the right of appeal therefrom in accordance with chapter 91.

§467B- Solicitation of funds for charitable purposes special fund.

There is established in the state treasury the solicitation of funds for charitable purposes special fund, into which shall be deposited all fees, fines, penalties, attorneys' fees, and costs of investigation collected under this chapter. Moneys in the fund may be expended by the attorney general for the enforcement of this chapter, the dissemination of public information, and the oversight of charities and professional fundraisers.

§467B- Written contracts; filing with attorney general. (a) There shall be a written contract between a charitable organization and a professional fundraising counsel or professional solicitor that shall be filed by the professional fundraising counsel or professional solicitor with the attorney general at least ten business days prior to the performance by the professional fundraising counsel or professional solicitor of any service. No solicitation or service pursuant to the contract shall begin before the contract is filed with the attorney general. The contract shall be signed by two authorized officials of the charitable organization, one of whom shall be a member of the organization's governing body, and the authorized contracting officer for the professional fundraising counsel or professional solicitor. The contract shall contain all of the following provisions:

- (1) The legal name and address of the charitable organization;
- (2) A statement of the charitable purpose for which the solicitation campaign is being conducted;
- (3) A statement of the respective obligations of the professional fundraising counsel or professional solicitor and the charitable organization;
- (4) A statement of the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to or retained by the charitable organization, if any, or, if the solicitation involves the sale of

goods, services, or tickets to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization, if any. The stated percentage shall exclude any amount that the charitable organization is to pay as fundraising costs;

- (5) Information concerning the compensation of the professional solicitor and fundraising counsel as follows:
 - (A) If the compensation of the professional fundraising counsel or professional solicitor is contingent upon the number of contributions or the amount of revenue received, a statement shall be included specifying the percentage of the gross revenue that is the basis for that compensation. The stated percentage shall include any amount that the professional fundraising counsel or professional solicitor is to be reimbursed for fundraising costs;
 - (B) If the compensation of the professional solicitor is not contingent upon the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor; or
 - (C) If the compensation of the fundraising counsel is not contingent on the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be stated in a dollar amount;
- (6) The effective and termination dates of the contract or, if the contract does not have a set termination date, a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date services will commence with respect to solicitation in this State of contributions for a charitable organization;
- (7) A statement that the professional fundraising counsel or professional solicitor will not at any time have custody or control of contributions;
- (8) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and
- (9) Any other information required by the rules of the attorney general.

(b) No professional fundraising counsel or professional solicitor shall contract with a charitable organization unless the professional fundraising counsel or professional solicitor is registered with the department. A contract with an unregistered professional fundraising counsel or professional solicitor shall be voidable at the option of the charitable organization.

(c) Whenever a charitable organization contracts with a professional fundraising counsel or professional solicitor, the charitable organization shall have the right to cancel the contract without cost, penalty, or liability, for a period of ten days following the date on which that contract is executed. Any provision in the contract that is intended to waive this right of cancellation shall be void and unenforceable.

(d) A charitable organization may cancel a contract pursuant to subsection (c) by serving a written notice of cancellation on the professional fundraising counsel or professional solicitor. If mailed, service shall be by certified mail, return receipt requested, and cancellation shall be deemed effective upon receipt by the professional fundraising counsel or professional solicitor. The notice shall be sufficient if it indicates that the charitable organization does not intend to be bound by the contract.

(e) Any funds collected after effective notice that a contract has been canceled shall be deemed to be held in trust for the benefit of the charitable organization without deduction for cost or expenses of any nature. A charitable organization shall be entitled to recover all funds collected after the date of cancellation.”

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Funds of the employees’ retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Integrated tax information management systems special fund under section 231-3.2;
- (17) Emergency and budget reserve fund under section 328L-3;
- (18) Public schools special fees and charges fund under section 302A-1130(f);
- (19) Sport fish special fund under section 187A-9.5;
- (20) Neurotrauma special fund under section 321H-4;
- (21) Deposit beverage container deposit special fund under section 342G-104;
- (22) Glass advance disposal fee special fund established by section 342G-82; ~~and~~
- (23) Center for nursing special fund under section 304D-5; and
- (24) Solicitation of funds for charitable purposes special fund established by section 467B-

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 3. Section 467B-1, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:
““Fundraising costs” means those costs incurred in inducing others to make contributions to a charitable organization for which the contributors will receive no direct economic benefit. The term generally includes but is not limited to salaries, rent, the costs of acquiring and maintaining mailing lists, printing, mailing, and all direct and indirect costs of soliciting, as well as the cost of unsolicited merchandise sent to encourage contributions. The term does not include the direct cost of merchandise or goods sold or the direct cost of fundraising dinners, bazaars, shows, circuses, banquets, dinners, theater parties, or any other form of benefit performances.

“Owner” means any person who has a direct or indirect interest in any professional fundraising counsel or professional solicitor.”

2. By amending the definition of “department” to read:

““Department” means the department of [commerce and consumer affairs of the State.] the attorney general.”

3. By amending the definition of “professional fund-raising counsel” to read:

““Professional fund-raising counsel” or “professional fundraising counsel” means any person who, for a fee, plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for or on behalf of any charitable organization, but who actually solicits no contributions as a part of the person’s services. The term includes a bona fide volunteer, salaried officer, or employee of a charitable organization if the bona fide volunteer, salaried officer, or employee of the charitable organization receives percentage compensation.”

4. By repealing the definition of “director”.

[““Director” means the director of commerce and consumer affairs of the State.”]

SECTION 4. Section 467B-3, Hawaii Revised Statutes, is amended to read as follows:

“§467B-3 Reciprocal agreements. The [director] attorney general may enter into a reciprocal agreement with the appropriate authority of another state for the purpose of exchanging information with respect to charitable organizations, professional [fund-raising] fundraising counsel, and professional solicitors.”

SECTION 5. Section 467B-5, Hawaii Revised Statutes, is amended to read as follows:

“§467B-5 Records to be kept. (a) Every charitable organization, professional [fund-raising] fundraising counsel, and professional solicitor subject to this chapter shall keep true and accurate records as to its activities in a form that will accurately provide support for the information required by this chapter. Upon demand, the records shall be made available to the [director] attorney general for inspection. [The] Except as provided in subsection (b), records shall be retained for a period of not less than five years.

(b) If a professional solicitor sells tickets to an event and represents that tickets will be donated for use by another, the professional solicitor, for not less than three years after the completion of such event, shall maintain the following records, which shall be available for inspection upon demand by the attorney general:

(1) The number of tickets purchased and donated by each contributor; and

- (2) The name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.”

SECTION 6. Section 467B-5.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A final accounting for each charitable sales promotion shall be prepared by the commercial co-venturer following the completion of the promotion. A copy of the final accounting shall be provided to the ~~[director]~~ attorney general not more than twenty days after the copy is requested by the ~~[director.]~~ attorney general. A copy of the final accounting shall be provided to the charitable organization not more than twenty days after the copy is requested by the charitable organization. The final accounting shall be kept by the commercial co-venturer for a period of three years, unless the commercial co-venturer and the charitable organization mutually agree that the accounting should be kept by the charitable organization instead of the commercial co-venturer.”

SECTION 7. Section 467B-8, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-8 Information filed to become public records.** Statements, reports, professional ~~[fund-raising]~~ fundraising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed under this chapter or by the ~~[director]~~ attorney general shall become government records in the department and be open to the general public for inspection at such times and under such conditions as the ~~[director]~~ attorney general may prescribe.”

SECTION 8. Section 467B-9, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-9 Prohibited acts.** (a) No person, for the purpose of soliciting contributions from persons in the State, shall use the name of any other person except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other persons.

A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if the latter person’s name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or the latter person’s name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(b) No charitable organization, professional solicitor, or professional ~~[fund-raising]~~ fundraising counsel soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

(c) No person, in connection with any solicitation or sale, shall misrepresent or mislead anyone by any manner, means, practice, or device whatsoever, to believe that the solicitation or sale is being conducted on behalf of a charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.

(d) No professional solicitor, and no agent, employee, independent contractor, or other person acting on behalf of the professional solicitor, shall solicit in the name of or on behalf of any charitable organization unless:

- (1) The professional solicitor has obtained the written authorization of two officers of the organization, which authorization shall bear the signature of the professional solicitor and the officers of the charitable organization and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date of issuance, and has filed a copy of the written authorization with the ~~[director]~~ attorney general prior to the solicitation; and
- (2) The professional solicitor and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor carries a copy of the authorization while conducting solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.

(e) No charitable organization, professional ~~[fund-raising]~~ fundraising counsel, or professional solicitor subject to this chapter shall use or exploit the fact of filing any statement, report, professional ~~[fund-raising]~~ fundraising counsel contracts, or professional solicitor contracts or other documents or information required to be filed under this chapter or with the department so as to lead the public to believe that the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the charitable organization, professional ~~[fund-raising]~~ fundraising counsel, or professional solicitor; provided that the use of the following statement shall not be deemed a prohibited exploitation: "Information regarding this organization has been filed with the State of Hawaii department of ~~[commerce and consumer affairs]~~ the attorney general. Filing does not imply endorsement or approval of the organization or the public solicitation for contributions."

(f) No person, while soliciting, shall impede or obstruct, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.

(g) No person shall submit for filing on behalf of any charitable organization, professional ~~[fund-raising]~~ fundraising counsel, or professional solicitor, any statement, financial statement, report, attachment, or other information to be filed with the department that contains information, statements, or omissions that are false or misleading.

(h) No person shall solicit contributions from persons in the State or otherwise operate in the State as a charitable organization, an exempt charitable organization, professional ~~[fund-raising]~~ fundraising counsel, professional solicitor, or commercial co-venturer unless the person has filed the information required by this chapter with the department in a timely manner.

(i) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the State unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and statements required by this chapter or fail to provide any information demanded by the ~~[director]~~ attorney general pursuant to this chapter in a timely manner.

(k) No person shall employ in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.

(l) No person, in the course of any solicitation, shall represent that funds collected will be used for a particular charitable purpose, or particular charitable purposes, if the funds solicited are not used for the represented purposes.

(m) No person shall receive compensation from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received compensation for advising the donor to make the donation; provided that

compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.

(n) No person shall act as a professional solicitor if the person, any officer, any person with a controlling interest therein, or any person the professional solicitor employs, engages, or procures to solicit for compensation, has been convicted by any federal or state court of any felony, or of any misdemeanor involving dishonesty or arising from the conduct of a solicitation for a charitable organization or purpose.”

SECTION 9. Section 467B-9.5, Hawaii Revised Statutes, is amended to read as follows:

“§467B-9.5 Financial statements. Whenever the [director] attorney general has reasonable grounds to believe that any charitable organization, professional [fund-raising] fundraising counsel, or professional solicitor has engaged in any act or practice constituting a violation of this chapter or any rule or order adopted or issued, the [director] attorney general may require the charitable organization, professional [fund-raising] fundraising counsel, or professional solicitor to submit to the department [a] an audited financial statement prepared in accordance with generally accepted accounting principles by an independent certified public accountant, or as otherwise required by the [director.] attorney general.”

SECTION 10. Section 467B-9.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[§467B-9.6]~~ Enforcement. (a) If any charitable organization, professional [fund-raising] fundraising counsel, or professional solicitor fails to file any statement, report, or other information required to be filed under this chapter, the [director] attorney general may demand that the charitable organization, the professional [fund-raising] fundraising counsel, or the professional solicitor provide the statement, report, or other information not more than twenty days after demanded by the [director.] attorney general. This demand may be mailed to the address on file with the department.

(b) Whenever the [director] attorney general has reason to believe that any charitable organization, professional [fund-raising] fundraising counsel, professional solicitor, or other person is operating in violation of this chapter, the [director] attorney general may investigate and bring an action in any court of this State to enjoin the charitable organization, professional [fund-raising] fundraising counsel, professional solicitor, or other person from continuing the violation or doing any acts in furtherance thereof, and for any other relief that the court deems appropriate.

~~[(c) The director may exercise the authority granted by this section against any charitable organization that operates under the guise or pretense of being an organization exempted by section 467B-11, and is not an organization entitled to an exemption.]”~~

SECTION 11. Section 467B-10, Hawaii Revised Statutes, is amended to read as follows:

“§467B-10 Penalties. Any person who intentionally or knowingly violates this chapter, or who intentionally or knowingly gives false or incorrect information to the [director] attorney general in filing statements or reports required by this chapter, whether the reports or statements are verified or not, shall ~~[for]~~:

(1) For the first offense be fined not less than \$100 nor more than \$500, or imprisoned not more than six months, or both; and ~~[for]~~

- (2) For the second and any subsequent offense, be fined not less than \$500 nor more than \$1,000, or imprisoned not more than one year, or both.”

SECTION 12. Section 467B-12, Hawaii Revised Statutes, is amended to read as follows:

“§467B-12 Filing requirements for professional [fund-raising] fundraising counsel and professional solicitors. (a) Every professional [fund-raising] fundraising counsel or professional solicitor, prior to any solicitation, shall file a registration statement with the department. The statement shall be in writing under oath or affirmation in the form prescribed by the [director] attorney general and shall contain the information as the [director] attorney general may require. The registration statement [by a professional fund-raising counsel or professional solicitor] shall be accompanied by a fee in the amount of [~~\$50;~~] \$250, or in the amount and with any additional sums as may be prescribed by the [director.] attorney general. The statement shall list the names, addresses, and social security numbers of all officers, agents, servants, employees, directors, and independent contractors of a professional [fund-raising] fundraising counsel, and the names, addresses, and social security numbers of all officers, agents, servants, employees, directors, and independent contractors of a professional solicitor. Renewal statements shall be filed with the department on or before July 1 of each calendar year in which the professional [fund-raising] fundraising counsel or professional solicitor does business in or from the State and shall be effective until June 30 of the next calendar year. The renewal statement shall be in a form prescribed by the [director.] attorney general. A renewal fee of [~~\$50;~~] \$250, or in any amount and with any additional sums as may be prescribed by the [director.] attorney general, shall accompany the renewal statement.

(b) The professional [fund-raising] fundraising counsel or professional solicitor, at the time of each filing, shall file with and have approved by the [director] attorney general a bond in which the applicant is the principal obligor in the penal sum of [~~\$5,000~~] \$25,000 issued with good and sufficient surety or sureties approved by the [director] attorney general and which shall remain in effect for one year. The bond shall inure to the benefit of the State, conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation that is a professional [fund-raising] fundraising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

(c) ~~The [charitable organization may void any agreement or contract for compensation or reimbursement with a professional solicitor or professional fund-raising counsel for that person's failure to comply with this section before or while soliciting persons on behalf of the charitable organization. If the charitable organization voids the agreement or contract, moneys collected by the professional solicitor or professional fund-raising counsel shall be paid to the charitable organization, to be held in trust on behalf of those donors who request a refund. The charitable organization shall make best efforts to notify donors of their option of receiving a refund. All moneys not claimed by the donors shall be the sole property of the charitable organization.] attorney general shall examine each registration statement and supporting document filed by a professional fundraising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the attorney general determines that the registration requirements are not satisfied, the attorney general shall notify the professional fundraising counsel or professional solicitor in writing within fifteen business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within seven business days after receipt of a notification that the registration requirements~~

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are not satisfied, the professional fundraising counsel or professional solicitor may request a hearing.”

SECTION 13. Section 467B-13, Hawaii Revised Statutes, is amended to read as follows:

“**§467B-13 Rules.** The [~~director~~] attorney general may make, amend, or repeal such rules pursuant to chapter 91, as may be deemed proper to effectuate this chapter.”

SECTION 14. Section 467B-6, Hawaii Revised Statutes, is repealed.

SECTION 15. All rights, powers, functions, and duties of the department of commerce and consumer affairs relating to the administration of chapter 467B, Hawaii Revised Statutes, are transferred to the department of the attorney general.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 16. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of commerce and consumer affairs relating to the functions transferred to the department of the attorney general shall be transferred with the functions to which they relate.

SECTION 17. All rules, policies, procedures, guidelines, and other material adopted or developed by the department of commerce and consumer affairs to implement chapter 467B, Hawaii Revised Statutes, which are reenacted or made applicable to the department of the attorney general by this Act, shall remain in full force and effect until amended or repealed by the department of the attorney general pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of commerce and consumer affairs or director of commerce and consumer affairs in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of the attorney general or the attorney general, as appropriate.

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 19. This Act shall take effect on July 1, 2005.

(Approved May 28, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 94

H.B. NO. 2421

A Bill for an Act Relating to the Licensing Requirements for Private Detectives and Guards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 463-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

““Firm” means a sole proprietor, corporation, joint venture, limited liability partnership, limited liability corporation, partnership, association, or any other legal business entity.”

2. By amending the definitions of “detective agency” or “private detective agency”, “guard agency”, “principal detective”, and “principal guard” to read as follows:

““Detective agency” or “private detective agency” means a licensed firm[, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association] engaged in the private detective business.

“Guard agency” means a licensed firm[, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association] engaged in the guard business.

“Principal detective” means a licensed detective designated as the detective agency’s primary licensee who is fully responsible for the direct management and control of the agency[.] and the agency’s employees.

“Principal guard” means a licensed guard designated as the guard agency’s primary licensee who is fully responsible for the direct management and control of the agency[.] and the agency’s employees.”

SECTION 2. Section 463-3, Hawaii Revised Statutes, is amended to read as follows:

“§463-3 Policy; powers and duties. It is the policy of this State to protect the general public from unlawful and unethical conduct and operation of the business of private [detective] detectives and guards. In addition to any other powers and duties authorized by law, the board [of detective and guards] may adopt, amend, or repeal rules, which shall have the force and effect of law, relating to qualifications for licensing of private detectives and guards, to the conduct and operation of the businesses of such license, and to the denial, renewal, reactivation, revocation, or suspension for cause of such licenses. The board shall consult with appropriate state and federal agencies and any appropriate industry or trade organization in establishing those rules. The rules so established shall be on the basis of what the board deems best suited to the public interest. The board also shall examine applicants for

private detective or guard licenses, grant licenses, and revoke or suspend licenses of licensees who violate this chapter.”

SECTION 3. Section 463-4, Hawaii Revised Statutes, is amended to read as follows:

“§463-4 Procedure in appeal of denial of licensure, revocation, or suspension of licenses. [(a)] Actions to revoke [or], suspend, or otherwise discipline licenses granted under this chapter or appeals of denials of licensure shall be subject to chapter 91 and shall be commenced by a notice of hearing.

[(b) The notice of hearing shall be served by certified mail to the licensee’s last known business address.

(c) ~~The licensee shall be given sixty days from the date of mailing the notice in which to answer.]”~~

SECTION 4. Section 463-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No firm[~~, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association~~] shall engage in the business of private detective, represent itself to be, hold itself out as, list itself[,], as, or advertise as a private detective agency [or bureau] or as furnishing detective or investigating services without first obtaining a license as a private detective agency from the board and paying the application and license fees. A detective agency shall have in its employ a principal detective who shall be a resident of the State.”

SECTION 5. Section 463-6, Hawaii Revised Statutes, is amended to read as follows:

“§463-6 Private detectives and detective agencies; qualifications for license. (a) The board may grant a private detective license to any suitable individual, or a detective agency license to any suitable firm[~~, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association~~] making written application therefor. The applicant, if an individual, or the principal detective of a firm[~~, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association,~~] shall:

- (1) Be not less than eighteen years of age;
- (2) Have had a high school education or its equivalent;
- (3) Have had experience reasonably equivalent to at least four years of full-time investigational work;
- (4) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person’s performance in the profession; [and]
- (5) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession, unless the conviction has been annulled or expunged by court order[~~];~~ and
- (6) Possess a history of honesty, truthfulness, financial integrity, and fair dealing.

A firm applying for a detective agency license shall have in its employ an individual who is licensed as a private detective and who shall be designated as the principal detective for the firm, and shall provide a bond as required under section 463-12.

(b) A detective agency may employ as many agents, operatives, and assistants in an investigative capacity and as necessary for the conduct of business; provided that the principal detective shall be held responsible for [the acts of those],

and have direct management and control of, the agency and the agency's employees while they are acting within the scope and purpose of the detective agency's business. ~~[The principal detective shall be responsible for the direct management and control of those employees.]~~ These employees shall not be required to have private detective licenses, and shall:

- (1) Have had an eighth grade education or its equivalent;
- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, ~~[may]~~ shall conduct a criminal history records check of all new employees employed in an investigative capacity directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic ~~[and that the employee is employed in an investigative capacity].~~

SECTION 6. Section 463-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) No firm[, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association]~~ shall engage in the business of guard for the purpose of protecting persons or property or to prevent theft or unlawful taking of goods, wares, merchandise, money, bonds, documents, or other articles of value for hire or reward or represent itself to be, hold itself out as, list itself[,;] as, or advertise as a guard agency without first obtaining a license as a guard agency from the board and paying the application and license fees. A guard agency shall have in its employ a principal guard who shall be a resident of the State.”

SECTION 7. Section 463-8, Hawaii Revised Statutes, is amended to read as follows:

“§463-8 Guards and guard agencies; qualifications for license. (a) The board may grant a guard license to any suitable individual, or a guard agency license to any suitable firm~~[, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association]~~ making written application therefor. The applicant, if an individual, or the principal guard of a firm~~[, joint venture, sole proprietorship that hires resident employees, corporation, partnership, or association]~~ shall:

- (1) Be not less than eighteen years of age;
- (2) Have had a high school education or its equivalent;
- (3) Have had experience reasonably equivalent to at least four years of full-time guard work;
- (4) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession; ~~[and]~~
- (5) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession, unless the conviction has been annulled or expunged by court order~~[-];~~ and
- (6) Possess a history of honesty, truthfulness, financial integrity, and fair dealing.

A firm applying for a guard agency license shall have in its employ an individual who is licensed as a guard and who shall be designated as the principal guard for the firm, and shall provide a bond as required under section 463-12.

(b) A guard agency may employ as many agents, operatives, and assistants in a guard capacity and as necessary for the conduct of business; provided that the principal guard shall be held responsible for ~~[the acts of those]~~, and have direct management and control of, the agency and the agency's employees while they are acting within the scope and purpose of the guard agency's business. ~~[The principal guard shall be responsible for the direct management and control of those employees.]~~ These employees shall not be required to have guard licenses, and shall:

- (1) Have had an eighth grade education or its equivalent;
- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, ~~[may]~~ shall conduct a criminal history records check of all new employees employed in a guard capacity directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic ~~[and that the employee is employed in a guard capacity].~~

SECTION 8. Section 463-10, Hawaii Revised Statutes, is amended to read as follows:

“§463-10 Licenses ~~[and]; fees; biennial renewal of licenses; [establishment of fees by rule.] inactive license.~~ (a) The license shall state the name and address of the principal office or place of business of the licensee, the name under which the licensed business is to be conducted, and the name of the principal detective or principal guard, if the licensee is a detective agency or guard agency.

~~[The holder of a license issued by the board who continues in active practice shall biennially renew the license and pay the renewal fee not later than June 30 of each even-numbered year.~~

~~The holder of an expired license may have the license restored within one year of the date of expiration upon due application therefor and payment of the delinquent fees and a penalty fee.]~~

(b) The biennial renewal fee and compliance resolution fund fees, or the inactive license fee, shall be paid to the board on or before June 30 of each even-numbered year. These fees shall be as provided in rules adopted by the director pursuant to chapter 91. The failure, neglect, or refusal of any licensee to pay these fees and to submit all documents required by the board on or before June 30 of each even-numbered year shall result in the automatic forfeiture of the licensee's license.

(c) A forfeited license may be restored upon written application within one year of the date of expiration and upon submittal of all required documents, fees, delinquent fees, and a penalty fee.

(d) Upon written request by a licensee, the board may place that licensee's active license on an inactive status. The licensee, upon payment of the inactive license fee, may continue on inactive status for the biennial period. A licensee may renew an inactive license upon notification to the board. The failure, neglect, or refusal of any licensee on inactive status to pay the inactive license fee shall result in

the automatic forfeiture of the licensee's license. While on inactive status, a licensee shall not be engaged in the practice of a private detective, guard, or agency. Any person who violates this prohibition shall be subject to discipline under this chapter and the board's rules. The license may be reactivated at any time by filing an application for reactivation with the board and:

- (1) Fulfilling all requirements established by the board, including the payment of the appropriate fees the licensee would have paid had the licensee continued to maintain the license on an active status; and
- (2) Providing any information regarding any arrest or conviction of any crime that reflects unfavorably on the fitness of the licensee to engage in the profession, and information that the licensee, while on inactive status, has suffered a psychiatric or psychological disorder that is directly related and detrimental to the licensee's performance in the profession.

The board may deny an application for reactivation as provided in its rules.

(e) For the purposes of this chapter, the dishonoring of any check upon first deposit shall constitute a failure to meet the fee requirements."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 28, 2004.)

ACT 95

S.B. NO. 2474

A Bill for an Act Relating to Renewable Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Building a sustainable future in Hawaii requires the government to take a leadership role in developing programs and initiatives designed to encourage people to live within their means. The legislature finds that a significant impediment to the goal of sustainability is the large imbalance between the amount of goods and services exported from Hawaii in comparison to the amount of goods and services imported to Hawaii. Specifically, the legislature notes that Hawaii exports only \$2,000,000,000 a year in goods and services while at the same time importing \$15,000,000,000 in goods and services.

Enterprise Honolulu stated that "a key characteristic of a healthy economy is that it exports more than it imports. If payments for imports exceed payments for exports, we have a 'trade deficit.' Just like a negative balance in your checking account impacts your household, if a trade deficit continues too long, the region's quality of life begins a downward slide."

The legislature finds that Hawaii imports between \$2,000,000,000 and \$3,000,000,000 worth of oil annually. These figures represent a growing dependence on oil imports.

The legislature finds that the key to achieving sustainability lies in economic diversification, export expansion, and import substitution. In the energy context, import substitution may be achieved by increasing the use and development of renewable energy resources found in Hawaii, such as wind, solar, ocean thermal, wave, and biomass resources. In addition, developing Hawaii's renewable energy

resources offers important job creation, environmental protection, and energy security benefits.

The legislature further finds that the State should be a strategic partner with the private sector in developing these renewable energy resources, and that the State's willingness and intent to provide relevant and meaningful support for this endeavor should be embedded into public policy.

The purpose of this Act is to decrease Hawaii's need to import large amounts of oil, and increase import substitution, economic efficiency, and productivity, by increasing the use and development of Hawaii's renewable energy resources through a partnership between the State and the private sector.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§269- State support for achieving renewable portfolio standards. (a) The department of land and natural resources and department of business, economic development and tourism shall facilitate the private sector's development of renewable energy projects by supporting the private sector's attainment of the renewable portfolio standards in section 269-92. Both departments shall provide meaningful support in areas relevant to the mission and functions of each department as provided in this section, as well as in other areas the directors of each department may deem appropriate.

(b) The department of land and natural resources shall:

- (1) Develop and publish a catalog by December 31, 2006, and every five years thereafter, of potential sites for the development of renewable energy; and
- (2) Work with electric utility companies and with other renewable energy developers on all applicable planning and permitting processes to expedite the development of renewable energy resources.

(c) The department of business, economic development and tourism shall:

- (1) Develop a program to maximize the use of renewable energy and cost-effective conservation measures by state government agencies;
- (2) Work with federal agencies to develop as much research, development and demonstration funding, and technical assistance as possible to support Hawaii in its efforts to achieve its renewable portfolio standards; and
- (3) Biennially, beginning in January 2006, issue a progress report to the governor and legislature.

§269- Renewable portfolio standards study. The public utilities commission shall:

- (1) By December 31, 2006, develop and implement a utility ratemaking structure which may include but is not limited to performance-based ratemaking, to provide incentives that encourage Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards established in section 269-92, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner, or as a result of circumstances beyond the control of the utility which could not have been reasonably anticipated or ameliorated;
- (2) Gather, review, and analyze empirical data to determine the extent to which any proposed utility ratemaking structure would impact electric utility companies' profit margins, and to ensure that these profit mar-

gins do not decrease as a result of the implementation of the proposed ratemaking structure;

- (3) Using funds from the public utilities special fund, contract with the Hawaii natural energy institute of the University of Hawaii to conduct independent studies to be reviewed by a panel of experts from entities such as the United States Department of Energy, National Renewable Energy Laboratory, Electric Power Research Institute, Hawaii electric utility companies, and other similar institutions with the required expertise. These studies shall include findings and recommendations regarding:
 - (A) The capability of Hawaii's electric utility companies to achieve renewable portfolio standards in a cost-effective manner, and shall assess factors such as the impact on consumer rates, utility system reliability and stability, costs and availability of appropriate renewable energy resources and technologies, permitting approvals, impacts on the economy, culture, community, environment, land and water, demographics, and other factors deemed appropriate by the commission; and
 - (B) Projected renewable portfolio standards to be set five and ten years beyond the then current standards;
- (4) Revise the standards based on the best information available at the time if the results of the studies conflict with the renewable portfolio standards established by section 269-92; and
- (5) Report its findings and revisions to the renewable portfolio standards based on its own studies and those contracted under paragraph (3), to the legislature no later than twenty days before the convening of the regular session of 2009, and every five years thereafter."

SECTION 3. Section 269-27.2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

In the exercise of its authority to determine the just and reasonable rate for the nonfossil fuel generated electricity supplied to the public utility by the producer, the commission shall establish that the rate for purchase of electricity by a public utility shall not be [less] more than one hundred per cent of the cost avoided by the utility when the utility purchases the electrical energy rather than producing the electrical energy. ~~[In determining the amount of the payment in relation to avoided cost, as that cost is or shall later be defined in the rules of the commission, the commission shall consider, on a generic basis, the minimum floor a utility should pay, giving consideration not only to the near-term adverse consequences to the ultimate consumers of utility provided electricity, but also to the long-term desirable goal of encouraging, to the greatest extent practicable, the development of alternative sources of energy.~~

~~Nothing in this subsection shall affect existing contracts between public utilities and suppliers of nonfossil fuel generated electricity.]"~~

SECTION 4. Section 269-91, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Cost-effective” means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs.”

2. By amending the definition of “renewable energy” to read:

““Renewable energy” means electrical energy produced by wind, solar energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal energy conversion, wave energy, biomass, including municipal solid waste, biofuels, or fuels derived [entirely] from organic sources, hydrogen fuels derived [entirely] from renewable energy, or fuel cells where the fuel is derived [entirely] from renewable sources. Where biofuels, hydrogen, or fuel cell fuels are produced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy. Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to produce renewable electricity in direct proportion to the percentage of the total heat value represented by the heat value of the renewable fuels. “Renewable energy” also means electrical energy savings brought about by the use of solar and heat pump water heating[-], seawater air conditioning district cooling systems, solar air conditioning and ice storage, quantifiable energy conservation measures, use of rejected heat from co-generation and combined heat and power systems excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies, and central station power projects.”

SECTION 5. Section 269-92, Hawaii Revised Statutes, is amended to read as follows:

“[~~§269-92~~] **Renewable portfolio standards.** Each electric utility company that sells electricity for consumption in the State shall establish a [~~renewables~~] renewable portfolio standard [goal] of:

- (1) Seven per cent of its net electricity sales by December 31, 2003;
- (2) Eight per cent of its net electricity sales by December 31, 2005; [~~and~~]
- (3) [~~Nine~~] **Ten** per cent of its net electricity sales by December 31, 2010[-];
- (4) **Fifteen** per cent of its net electricity sales by December 31, 2015; and
- (5) **Twenty** per cent of its net electricity sales by December 31, 2020.

The public utilities commission shall determine if an electric utility company is unable to meet the renewable portfolio standards in a cost-effective manner, or as a result of circumstances beyond its control which could not have been reasonably anticipated or ameliorated. If this determination is made, the electric utility company shall be relieved of responsibility for meeting the renewable portfolio standard for the period of time that it is unable to meet the standard.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved June 2, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 96

S.B. NO. 1239

A Bill for an Act Relating to Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The increased use of alternative fuels in internal combustion engines can reduce the amount of air pollution generated by cars, increase mileage, and reduce dependency on fossil fuel. The purpose of this Act is to encourage fuel diversity and reduce Hawaii's reliance on imported fossil fuel by providing incentives that facilitate the increased use of alternative fuels.

SECTION 2. Section 243-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The tax shall not be collected in respect to any benzol, benzene, toluol, xylol, or alternative fuel sold for use other than for operating internal combustion engines. With respect to these products, other than alternative fuels, the department by rule shall provide for the reporting and payment of the tax and for the keeping of records in respect thereto, in such manner as to collect, for each gallon of such product sold for use in internal combustion engines for the generation of power, or so used, the same tax or taxes as apply to each gallon of diesel oil. With respect to alternative fuels, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection. This subsection shall not apply to aviation fuel sold for use in or used for airplanes.

- (1) Every distributor of any alternative fuel for operation of an internal combustion engine shall pay a license tax to the department of ~~[1]~~ one-quarter of one cent for each gallon of such alternative fuel sold or used by the distributor[-];
- (2) Every distributor, in addition to the tax required under paragraph (1) of this subsection, shall pay a license tax to the department for each gallon of alternative fuel sold or used by the distributor for operating a motor vehicle or motor vehicles upon the public highways of the State at a rate proportional to that of the rates applicable to diesel oil in subsection (b), rounded to the nearest one-tenth of a cent, as follows:
 - (A) Ethanol, ~~[0.29]~~ 0.145 times the rate for diesel;
 - (B) Methanol, ~~[0.22]~~ 0.11 times the rate for diesel;
 - (C) Biodiesel, ~~[0.50]~~ 0.25 times the rate for diesel;
 - (D) Liquefied petroleum gas, 0.33 times the rate for diesel; and
 - (E) For other alternative fuels, the rate shall be based on the energy content of the fuels as compared to diesel fuel, using a lower heating value of one hundred thirty thousand British thermal units per gallon as a standard for diesel, so that the tax rate, on an energy content basis, is equal to ~~[half]~~ one-quarter the rate for diesel fuel.

The taxes so paid shall be paid into the state treasury and deposited in special funds or paid over in the same manner as provided in subsection (b) in respect of the tax on diesel oil[-];

- (3) If any user of alternative fuel furnishes to the distributor a certificate, in such form as the department shall prescribe, or the distributor who uses alternative fuel signs such certificate, certifying that the alternative fuel is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided by paragraphs (1) and (2) of this section shall not be applicable; provided that no certificate shall be required if the alternative fuel is used for fuel

and heating purposes in the home. In the event a certificate is not or cannot be furnished and the alternative fuel is in fact used for operating an internal combustion engine or operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by such paragraphs. The department shall adopt rules to administer the refunding of such taxes imposed.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004, and shall apply to taxable years beginning after December 31, 2003.

(Approved June 2, 2004.)

ACT 97

S.B. NO. 3162

A Bill for an Act Relating to Renewable Energy Technologies Income Tax Credit.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-12.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§235-12.5**~~]]~~ **Renewable energy technologies; income tax credit.** (a)

When the requirements of subsection (c) are met, each individual or corporate resident taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service by a taxpayer during the taxable year. This credit shall be available for systems installed and placed in service after June 30, 2003. The tax credit may be claimed as follows:

- (1) Solar thermal energy systems for:
 - (A) ~~[Single family]~~ Single-family residential property: thirty-five per cent of the actual cost or \$1,750, whichever is less;
 - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and
 - (C) Commercial property: thirty-five per cent of the actual cost or \$250,000, whichever is less; ~~[and]~~
- (2) ~~[Wind-powered]~~ Wind-powered energy systems for:
 - (A) ~~[Single family]~~ Single-family residential property: twenty per cent of the actual cost or \$1,500, whichever is less;
 - (B) Multi-family residential property: twenty per cent of the actual cost or \$200 per unit, whichever is less; and
 - (C) Commercial property: twenty per cent of the actual cost or \$250,000, whichever is less; and
- (3) Photovoltaic energy systems for:
 - (A) ~~[Single family]~~ Single-family residential property: thirty-five per cent of the actual cost or \$1,750, whichever is less;
 - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and

(C) Commercial property: thirty-five per cent of the actual cost or \$250,000, whichever is less; provided that multiple owners of a single system shall be entitled to a single tax credit; and provided further that the tax credit shall be apportioned between the owners in proportion to their contribution to the cost of the system.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

(b) For the purposes of this section:

“Actual cost” means costs related to the renewable energy technology systems under subsection (a), including accessories and installation, but not including the cost of consumer incentive premiums unrelated to the operation of the system or offered with the sale of the system and costs for which another credit is claimed under this chapter.

“Renewable energy technology system” means a new system that captures and converts a renewable source of energy, such as wind, heat (solar thermal), or light (photovoltaic) from the sun into:

- (1) A usable source of thermal or mechanical energy;
- (2) Electricity; or
- (3) Fuel.

“Solar or wind energy system” means any identifiable facility, equipment, apparatus, or the like that converts insolation or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation.

(c) The dollar amount of any new federal energy tax credit similar to the credit provided in this section that is established after June 30, 2003, and any utility rebate, shall be deducted from the cost of the qualifying system and its installation before applying the state tax credit.

(d) The director of taxation shall prepare any forms that may be necessary to claim a tax credit under this section, including forms identifying the technology type of each tax credit claimed under this section, whether for solar thermal, photovoltaic from the sun, or wind. The director may also require the taxpayer to furnish reasonable information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(e) If the tax credit under this section exceeds the taxpayer’s income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer’s income tax liability in subsequent years until exhausted. All claims for the tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with this subsection shall constitute a waiver of the right to claim the credit.

~~[(e)]~~ (f) By or before December, 2005, to the extent feasible, using existing resources to assist the energy-efficiency policy review and evaluation, the department shall assist with data collection on the following:

- (1) The number of renewable energy technology systems that have qualified for a tax credit during the past year by:
 - (A) Technology type (solar thermal, photovoltaic from the sun, and wind); and
 - (B) Taxpayer type (corporate and individual); and
- (2) The total cost of the tax credit to the State during the past year by:
 - (A) Technology type; and

(B) Taxpayer type.”

SECTION 2. Section 241-4.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§241-4.6] Energy conservation;]~~ Renewable energy technologies; income tax credit. The renewable energy ~~[conservation]~~ technologies income tax credit provided under section ~~[235-12]~~ 235-12.5 shall be operative for this chapter for ~~[all taxable years beginning after December 31, 1990.]~~ taxable years beginning after December 31, 2002; provided that the system was installed after June 30, 2003.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2002.

(Approved June 2, 2004.)

ACT 98

H.B. NO. 2049

A Bill for an Act Relating to Energy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 36-41, Hawaii Revised Statutes, is amended to read as follows:

“§36-41 Energy retrofit and performance contracting for public facilities. (a) All agencies shall evaluate and identify for implementation energy efficiency retrofitting through performance contracting. Agencies that perform energy efficiency retrofitting may continue to receive budget appropriations for energy expenditures at an amount that shall¹ not fall below the pre-retrofitting energy budget but shall¹ rise in proportion to any increase in the agency’s overall budget for the duration of the performance contract or project payment term.

(b) Any agency may enter into a multi-year energy performance contract for the purpose of undertaking or implementing energy conservation or alternate energy measures in a facility or facilities. An energy performance contract may include but shall not be limited to financing options such as leasing, lease-purchase, financing agreements, third-party joint ventures, ~~[shared-savings]~~ guaranteed-savings plans, or energy service contracts, or any combination thereof; provided that in due course the agency may receive title to the energy system being financed. Except as otherwise provided by law, the agency that is responsible for a particular facility shall review and approve energy performance contract arrangements for the facility.

(c) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with the following provisions:

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment or both. The request for proposals shall contain terms and conditions relating to submission of proposals,

evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;

- (2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
- (4) The term of any energy performance contract entered into pursuant to this section shall not exceed ~~[fifteen]~~ twenty years;
- (5) Any contract entered into shall contain the following annual allocation dependency clause:
 "The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made";
- (6) Any energy performance contract may provide that the agency ~~[ultimately]~~ ultimately receive title to the energy system being financed under the contract; ~~[and]~~
- (7) Any energy performance contract shall provide that total payments shall not exceed total savings[:]; and
- (8) For any guaranteed-savings plan:

(A) The payment obligation for each year of the contract, including the year of installation, shall be guaranteed by the private sector person or company to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such guarantee, at the option of the agency, shall be a bond or insurance policy, or some other guarantee determined sufficient by the agency to provide a level of assurance similar to the level provided by a bond or insurance policy; and

(B) In the event that the actual annual verified savings are less than the annual amount guaranteed by the energy service company, the energy service company, within thirty days of being invoiced, shall pay the agency, or cause the agency to be paid, the difference between the guaranteed amount and the actual verified amount.

~~[(d) Any agency may enter into an energy performance contract pursuant to this section for a period not to exceed fifteen years.~~

~~(e)] (d) For purposes of this section:~~

~~"Agency" means any executive department, independent commission, board, bureau, office, or other establishment of the State or any county government, the judiciary, the University of Hawaii, or any quasi-public institution that is supported in whole or in part by state or county funds.~~

~~"Energy performance contract" means an agreement for the provision of energy services and equipment, including but not limited to building or facility energy conservation enhancing retrofits, water saving technology retrofits, and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection~~

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with, a facility in exchange for a portion of the cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the verified energy savings, energy production, avoided maintenance, avoided energy equipment replacement, or any combination of the foregoing bases. Energy conservation retrofits also include energy saved off-site by water or other utility conservation enhancing retrofits.

“Facility” means a building or buildings or similar structure, including the site owned or leased by, or otherwise under the jurisdiction of, the agency.

“Financing agreement” shall have the same meaning as in section 37D-2.

~~“Shared-savings plan”~~ “Guaranteed-savings plan” means an agreement under which [the] a private sector person or company undertakes to design, install, operate, and maintain improvements to [the] an agency’s facility or facilities and the agency agrees to pay a contractually specified amount of verified energy cost savings.

“Verified” means the technique used in the determination of baseline energy use, post-installation energy use, and energy and cost savings by the following measurement and verification techniques: engineering calculations, metering and monitoring, utility meter billing analysis, computer simulations, mathematical models, and agreed-upon stipulations by the customer and the energy service company.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved June 2, 2004.)

Note

1. Prior to amendment “will” appeared here. “Shall” should be underscored.

ACT 99

H.B. NO. 2048

A Bill for an Act Relating to Net Energy Metering.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 269-101, Hawaii Revised Statutes, is amended by amending the definition of “eligible customer-generator” to read as follows:

““Eligible customer-generator” means a metered residential or commercial customer, including a government entity, of an electric utility who owns and operates a solar, wind turbine, biomass, or hydroelectric energy generating facility, or a hybrid system consisting of two or more of these facilities, with a capacity of not more than ~~ten~~ fifty kilowatts, that is:

- (1) Located on the customer’s premises;
- (2) Operated in parallel with the utility’s transmission and distribution facilities;
- (3) In conformance with the utility’s interconnection requirements; and
- (4) Intended primarily to offset part or all of the customer’s own electrical requirements.”

SECTION 2. Section 269-111, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§269-111]]~~ **Safety and performance standards.** A solar, wind turbine, biomass, or hydroelectric energy generating system, or a hybrid system consisting of two or more of these facilities, used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as the Underwriters Laboratories and, where applicable, rules of the public utilities commission regarding safety and reliability. ~~[Aa]~~ For systems of ten kilowatts or less, an eligible customer-generator whose solar, wind turbine, biomass, or hydroelectric energy generating system, or whose hybrid system consisting of two or more of these facilities, meets those standards and rules shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 2, 2004.)

ACT 100

S.B. NO. 3113

A Bill for an Act Relating to Voting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Kalaupapa is a unique, isolated, and closed community. Many of the long-time residents of the settlement are advanced in age and physically unable to operate a precinct poll. To exercise their right to vote, Kalaupapa residents must presently apply for absentee ballots in every election year. In a joint meeting with the chief election officer of the State and the county clerk of Maui, residents expressed their unanimous desire to have absentee ballots mailed to them automatically, without the need to file an application. The legislature finds that there is a compelling state interest to provide this service to the residents of this area, and this Act is consistent with the State’s special mandate to care for the residents of Kalaupapa settlement.

SECTION 2. Section 15-4, Hawaii Revised Statutes, is amended to read as follows:

“§15-4 Request for absentee ballot. (a) Any person registered to vote may request an absentee ballot in person or in writing from the clerk not earlier than on the sixtieth day and not later than 4:30 p.m. on the seventh day prior to the election. Any mailed requests for an absentee ballot shall be mailed by the person directly to the clerk. The clerk may waive any or all of the foregoing requirements in special cases as provided in the rules adopted by the chief election officer.

The request shall include information such as the person’s social security number, date of birth, and the address under which the person is registered to vote. The request shall also include the address to which the person wishes the requested ballot forwarded. The request, when made for any primary or special primary election, may include an additional request for an absentee ballot to be voted at any election immediately following the primary or special primary; provided the person so indicates in the person’s request.

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Subsequent to the closing of registration for each election, the clerk may mail a request form for an absentee ballot to each voter in a remote area who has not already made such a request. The request form shall be accompanied by:

- (1) A stamped, self-addressed envelope; and
- (2) Instructions regarding the manner of completing and returning the request form.

(b) Notwithstanding subsection (a), the clerk shall mail an absentee ballot for each primary, special primary, special, general, and special general election to each registered voter who resides in the county of Kalawao. The chief election officer may adopt rules to carry out this subsection."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 3, 2004.)

ACT 101

H.B. NO. 2523

A Bill for an Act Relating to Passenger Facility Charges.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

"§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Integrated tax information management systems special fund under section 231-3.2;
- (17) Emergency and budget reserve fund under section 328L-3;
- (18) Public schools special fees and charges fund under section 302A-1130(f);
- (19) Sport fish special fund under section 187A-9.5;

- (20) Neurotrauma special fund under section 321H-4;
- (21) Deposit beverage container deposit special fund under section 342G-104;
- (22) Glass advance disposal fee special fund established by section 342G-82; [and]
- (23) Center for nursing special fund under section 304D-5; and
- (24) Passenger facility charge special fund established by section 261-5.5;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 2. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special out-of-school time instructional program fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Funds of the employees’ retirement system created by section 88-109;
- (9) Unemployment compensation fund established under section 383-121;
- (10) Hawaii hurricane relief fund established under chapter 431P;
- (11) Convention center enterprise special fund established under section 201B-8;
- (12) Hawaii health systems corporation special funds;
- (13) Tourism special fund established under section 201B-11;
- (14) Universal service fund established under chapter 269;
- (15) Integrated tax information management systems special fund under section 231-3.2;
- (16) Emergency and budget reserve fund under section 328L-3;
- (17) Public schools special fees and charges fund under section 302A-1130(f);
- (18) Sport fish special fund under section 187A-9.5;
- (19) Neurotrauma special fund under section 321H-4;
- (20) Center for nursing special fund under section 304D-5; and
- (21) Passenger facility charge [~~revenue~~] special fund established by section 261-5.5;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 3. Section 103-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a works of art special fund, into which shall be transferred one per cent of all state fund appropriations for capital improvements designated for the construction cost element; provided that this transfer shall apply only to capital improvement appropriations that are designated for the construction or renovation of state buildings. The one per cent transfer requirement shall not apply to appropriations from the passenger facility charge [revenue] special fund established by section 261-5.5.”

SECTION 4. Section 261-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except for that portion of the payments received by the department under a contract entered into as authorized by section 261-7 and deposited in the transportation use special fund pursuant to section 261D-1, and except for all proceeds from the passenger facility charge and deposited in the passenger facility charge special fund, all moneys received by the department from rents, fees, and other charges collected pursuant to this chapter, as well as all aviation fuel taxes paid pursuant to section 243-4(a)(2), shall be paid into the airport revenue fund created by section 248-8.

All moneys paid into the airport revenue fund shall be appropriated, applied, or expended by the department for any purpose within the jurisdiction, powers, duties, and functions of the department related to the statewide system of airports, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of airports and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning for the statewide system of airports, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. The department shall generate sufficient revenues from its airport properties to meet all of the expenditures of the statewide system of airports and to comply with section 39-61; provided that as long as sufficient revenues are generated to meet such expenditures, the director of transportation may, in the director’s discretion, grant a rebate of the aviation fuel taxes paid into the airport revenue fund during a fiscal year pursuant to sections 243-4(a)(2) and 248-8 to any person who has paid airport use charges or landing fees during such fiscal year. Such rebate may be granted during the next succeeding fiscal year but shall not exceed one-half cent per gallon per person, and shall be computed on the total number of gallons for which the tax was paid by such person, for such fiscal year.”

SECTION 5. Section 261-5.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§261-5.5]~~ **Passenger facility charge [revenue] special fund**. (a) There is established in the state treasury the passenger facility charge [revenue] special fund, into which shall be deposited all proceeds from ~~[any]~~ the passenger facility charge.

(b) Moneys in the passenger facility charge [revenue] special fund shall be used for airport capital improvement program projects approved by the legislature.

~~[(c) The passenger facility charge revenue fund is exempted from section 36-30.~~

~~[(d) The passenger facility charge revenue fund is exempted from section 103-8.5.~~

~~[(e)]~~ (c) The director of transportation shall administer the passenger facility charge [revenue] special fund.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 3, 2004.)

ACT 102

H.B. NO. 1770

A Bill For An Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291-24.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291-24.6]]~~ **Motor vehicle alarm systems.** (a) “Motor vehicle alarm system” means any device ~~[which]~~ that is designed or used for the detection of an unauthorized entry into a motor vehicle, or for alerting others to the commission of an unlawful act, or both, and ~~[which]~~ that emits a sound when activated.

(b) If a motor vehicle alarm system installed in a motor vehicle is activated and emits a sound for more than five continuous minutes, the registered owner of the motor vehicle shall be fined not more than \$100[-]; provided that after the third violation, the fine shall be:

- (1) \$250 for the fourth violation;
- (2) \$375 for the fifth violation; and
- (3) \$500 for a sixth or subsequent violation.

(c) An offense under this section shall be a violation for which a police officer shall issue a summons or citation to the registered owner of the vehicle.”

SECTION 2. Section 291C-102, Hawaii Revised Statutes, is amended to read as follows:

“**§291C-102 Noncompliance with speed limit prohibited.** (a) No person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit established by county ordinance.

(b) The director of transportation with respect to highways under the director’s jurisdiction may place signs establishing maximum speed limits or minimum speed limits. Such signs shall be official signs and no person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit stated on such signs.

(c) If the maximum speed limit is exceeded by more than ten miles per hour, a surcharge of \$10 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

(d) In addition to the penalties prescribed by section 291C-161 and the surcharge imposed pursuant to subsection (c), the driver’s license and privilege to operate a vehicle of a person who violates this section by operating a vehicle at a speed exceeding ninety miles per hour may be ordered revoked by the court for a period not to exceed five years.”

ACT 103

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2004.

(Approved June 3, 2004.)

ACT 103

S.B. NO. 2995

A Bill for an Act Relating to Commercial Driver Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-231, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

“Driving a commercial motor vehicle while under the influence of an intoxicant” means committing any one or more of the following acts in a commercial motor vehicle:

- (1) Driving a commercial motor vehicle while the person’s alcohol concentration is 0.04 per cent or more by weight;
- (2) Driving under the influence of an intoxicant pursuant to section 291E-61; or
- (3) Refusing to undergo such testing as required by any state or jurisdiction in the enforcement of section 383.51(b) or 392.5(a)(2) of title 49, Code of Federal Regulations.

“Fatality” means the death of a person as a result of a motor vehicle accident.

“Imminent hazard” means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment.

“Noncommercial motor vehicle” means a motor vehicle or combination of motor vehicles not defined by the term “commercial motor vehicle (CMV)” under section 286-2.

“School bus” means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events, but does not include a bus, as defined under section 286-2, used as a common carrier as defined under section 271-4.”

SECTION 2. Section 286-102, Hawaii Revised Statutes, is amended to read as follows:

“§286-102 Licensing. (a) No person, except one exempted under section 286-105, one who holds an instruction permit under section 286-110, one who holds a commercial driver’s license issued under section 286-239, or a commercial driver’s license instruction permit issued under section 286-236, shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

- (1) Mopeds;
- (2) Motorcycles and motor scooters;
- (3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of fifteen thousand pounds or less; and
- (4) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of fifteen thousand one through twenty-six thousand pounds.

A school bus or van operator shall be properly licensed to operate the category of vehicles that the operator operates as a school bus or van and shall comply with the standards of the department of transportation as provided by rules adopted pursuant to section 286-181.

(c) No person shall receive a driver's license without surrendering to the examiner of drivers all valid driver's licenses in the person's possession. All licenses so surrendered shall be returned to the issuing authority, together with information that the person is licensed in this State; provided that with the exception of driver's licenses issued by any Canadian province, a foreign driver's license may be returned to the owner after being invalidated pursuant to issuance of a Hawaii license; and provided further that the examiner of drivers shall notify the authority that issued the foreign license that the license has been invalidated and returned because the owner is now licensed in this State. No person shall be permitted to hold more than one valid driver's license at any time.

(d) Before issuing a driver's license, the examiner of drivers shall complete a check of the applicant's driving record to determine whether the applicant is subject to any disqualification under section 286-240, or any license suspension, revocation, or cancellation under state law, and whether the applicant has a driver's license from more than one state or jurisdiction. The record check shall include but is not limited to the following:

- (1) A check of the applicant's driving record as maintained by the applicant's state of licensure;
- (2) A check with the commercial driver license information system;
- (3) A check with the National Driver Register; and
- (4) If the driver is renewing a commercial driver's license for the first time after September 30, 2002, a request for the applicant's complete driving record from all states where the applicant was previously licensed to drive any motor vehicle over the last ten years; provided that a notation is made on the driving record confirming the check has been made and the date it was done.

~~(d)~~ (e) In addition to other qualifications and conditions by or pursuant to this part, the right of an individual to hold a motor vehicle operator's license or permit issued by the county is subject to the requirements of section 576D-13.

Upon receipt of certification from the child support enforcement agency pursuant to section 576D-13 that an obligor or individual who owns or operates a motor vehicle is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, the examiner of drivers shall suspend the license and right to operate motor vehicles and confiscate the license of the obligor. The examiner of drivers shall not reinstate an obligor's or individual's license until the child support enforcement agency, the office of child support hearings, or the family court issues an authorization that states the obligor or individual is in compliance with an order

of support or has complied with a subpoena or warrant relating to a paternity or child support hearing.

The licensing authority may adopt rules pursuant to chapter 91 to implement and enforce the requirements of this section.”

SECTION 3. Section 286-231, Hawaii Revised Statutes, is amended by amending the definitions of “disqualification”, “nonresident commercial driver’s license”, and “serious traffic violation” to read as follows:

““Disqualification” means ~~[a prohibition against driving a commercial motor vehicle.]~~ any of the following three actions:

- (1) The suspension, revocation, or cancellation of a commercial driver’s license by the state or jurisdiction of issuance;
- (2) Any withdrawal of a person’s privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations); or
- (3) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under title 49, Code of Federal Regulations part 391.

“Nonresident commercial driver’s license” means a commercial driver’s license issued by a state ~~[to an individual who resides in a foreign jurisdiction.]~~ under either of the following two conditions:

- (1) To an individual domiciled in a foreign country meeting the requirements of title 49, Code of Federal Regulations section 383.23(b)(1); or
- (2) To an individual domiciled in another state meeting the requirements of title 49, Code of Federal Regulations section 383.23(b)(2).

“Serious traffic violation” means~~[:]~~ conviction of any of the following offenses when operating a commercial motor vehicle, except for weight, defect, and parking violations:

- (1) ~~[Driving at a speed of fifteen miles per hour or more above the posted speed limit;]~~ Excessive speeding, involving any single offense for any speed of fifteen miles per hour or more above the posted speed limit;
- (2) ~~[Driving a commercial motor vehicle in disregard of the safety of persons or property (reckless driving);]~~ Reckless driving, or driving a commercial motor vehicle in disregard of the safety of persons or property, including but not limited to offenses of driving a commercial motor vehicle in wilful or wanton disregard for the safety of persons or property;
- (3) Improper or erratic traffic lane changes;
- (4) Following a vehicle ahead too closely; ~~[or]~~
- (5) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident~~[:]~~;
- (6) Driving a commercial motor vehicle without obtaining a commercial driver’s license;
- (7) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession; provided that this paragraph shall not apply to a citation issued under, or an offense disposed of pursuant to, section 286-116(a) or a substantially similar provision of law in another state; or
- (8) Driving a commercial motor vehicle without the proper class or endorsements of commercial driver’s license for the specific vehicle group being operated or for the passengers or type of cargo being transported.”

SECTION 4. Section 286-234, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No employer shall knowingly allow, require, permit, or authorize a driver to drive a commercial motor vehicle:

- (1) During any period in which the driver has a driver’s license or permit suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle;
- (2) During any period in which the driver has more than one driver’s license;
- (3) During any period in which the driver, or the commercial motor vehicle the driver is driving, or the motor carrier operation, is subject to an out-of-service order; or
- (4) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.”

SECTION 5. Section 286-236, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The examiner of drivers may waive the driving skills test specified in this section for a commercial driver’s license applicant who meets the requirements of 49 Code of Federal Regulations[~~-, §383.77.~~] section 383.77 or 383.123(b).

(d) A commercial driver’s license or commercial driver’s instruction permit, including a provisional or temporary license or permit, shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person’s driver’s license is suspended, revoked, or canceled in any state; or while the person holds a driver’s license issued by any other state unless the person first surrenders that license.”

SECTION 6. Section 286-238, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The application for a commercial driver’s license or commercial driver’s instruction permit shall include the following with respect to the applicant:

- (1) The full name and current mailing, residential, and business addresses;
- (2) A physical description including sex and height;
- (3) Date of birth;
- (4) Social security number;
- (5) Signature;
- (6) Color photograph;
- (7) Certifications including those required by 49 Code of Federal Regulations, §383.71(a), except that this certification applies to both intrastate and interstate drivers; ~~[and]~~
- (8) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous ten years; and

~~[(8)]~~ (9) Any other information required by section 286-111.

The applicant shall produce proof of residency to show the applicant’s state of domicile as defined in 49 Code of Federal Regulations ~~[Part]~~ part 383.5.”

SECTION 7. Section 286-239, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Commercial drivers’ licenses may be issued with any one or more of the following endorsements and restriction:

- (1) "H" - Authorizes the driver to drive a vehicle transporting hazardous materials;
- (2) "K" - Restricts the driver to vehicles not equipped with air brakes;
- (3) "T" - Authorizes driving double and triple trailers;
- (4) "P" - Authorizes driving vehicles carrying passengers;
- (5) "N" - Authorizes driving tank vehicles; ~~and~~
- (6) "X" - Represents a combination of hazardous materials and tank vehicle endorsements[:]; and
- (7) "S" - Authorizes driving school buses."

2. By amending subsection (e) to read:

~~"(e) Before issuing a commercial driver's license, the examiner of drivers shall obtain the applicant's driving record information through the commercial driver's license information system, the National Driver Register, and from the last state that issued the applicant a commercial driver's license;]~~ complete a check of the applicant's driving record to determine whether the applicant is subject to any disqualification under section 286-240, or any license suspension, revocation, or cancellation under state law, and whether the applicant has a driver's license from more than one state or jurisdiction. The record check shall include but is not limited to the following:

- (1) A check of the applicant's driving record as maintained by the applicant's state of licensure;
- (2) A check with the commercial driver license information system;
- (3) A check with the National Driver Register; and
- (4) A request for the applicant's complete driving record from all states where the applicant was previously licensed to drive any motor vehicle over the last ten years. This check is only required for drivers renewing a commercial driver's license for the first time after September 30, 2002, provided that a notation is made on the driver's record confirming the check has been made and the date it was done."

3. By amending subsection (h) to read:

~~"(h) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by section 286-238, providing updated information and required certifications. If the applicant desires to retain a hazardous materials endorsement, the knowledge test for a hazardous materials endorsement shall also be taken and passed[:] by the applicant. The examiner of drivers shall complete a check of the applicant's driving record as required under subsection (e)."~~

SECTION 8. Section 286-240, Hawaii Revised Statutes, is amended to read as follows:

"§286-240 Disqualification and cancellation. (a) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- (1) Driving a ~~[eommercial]~~ motor vehicle under the influence of alcohol, a controlled substance, or any drug which impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver's blood is 0.04 per cent or more by weight;
- (3) ~~[Refusal]~~ Refusing to submit to a test to determine the driver's alcohol concentration while driving a ~~[eommercial]~~ motor vehicle[:]; as required under sections 286-243 and 291E-11;
- (4) Using a ~~[eommercial]~~ motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the ~~[eommercial]~~ motor vehicle driven by the person; ~~[or]~~

- (6) Unlawful transportation, possession, or use of a controlled substance while on-duty time[-];
- (7) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license had been revoked, suspended, or canceled, or the driver was otherwise disqualified from operating a commercial motor vehicle; or
- (8) Causing a fatality through the operation of a commercial motor vehicle, including but not limited to the crimes of manslaughter and negligent homicide in any degree.

(b) A person is disqualified for a period of not less than three years for any conviction of a violation of any offense listed in subsection (a) that is committed while a hazardous material required to be placarded is being transported.

(c) A person is disqualified from driving a commercial motor vehicle for life if convicted two or more times for violations of any of the offenses listed in subsection (a).

(d) A person is disqualified from driving a commercial motor vehicle for life if the person uses a [~~commercial~~] motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. These disqualification periods shall also apply to offenses committed while operating a noncommercial motor vehicle only if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license.

(f) A person is disqualified from driving a commercial motor vehicle or from resubmitting an application for a period of not less than sixty days, if the examiner of drivers finds that a commercial driver's license holder or applicant for a commercial driver's license has falsified information or failed to report or disclose required information either before or after issuance of a commercial driver's license.

(g) A person is disqualified from driving a commercial motor vehicle for a period of not less than ninety days and not more than one year for a first violation, or for at least one year and not more than five years for a second violation, or at least three years and not more than five years for a third or subsequent violation of [~~an~~] a driver or vehicle out-of-service order committed in a commercial motor vehicle arising from separate incidents occurring within a ten-year period.

(h) A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred eighty days or more than two years for a first violation, or for at least three years and not more than five years for any subsequent violation, of [~~an~~] a driver or vehicle out-of-service order committed in a commercial motor vehicle transporting hazardous materials or designed to transport sixteen or more occupants, arising from separate incidents occurring within a ten-year period.

(i) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of a first violation, not less than one hundred twenty days if convicted of a second violation during any three-year period, or not less than one year if convicted of a third or subsequent violation during any three-year period for a violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing:

- (1) For all drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
- (2) For all drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

- (3) For all drivers who are always required to stop, failing to stop before driving onto the crossing;
- (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
- (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or
- (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(j) A person is disqualified from driving a commercial motor vehicle when the driver's driving is determined to constitute an imminent hazard, as defined in section 286-231, and the disqualification is imposed in accordance with the provisions of title 49 Code of Federal Regulations section 383.52."

SECTION 9. Section 286-241, Hawaii Revised Statutes, is amended to read as follows:

"§286-241 Notification of suspension, revocation, or cancellation of commercial driver's licenses or permits. After suspending, revoking, or canceling a commercial driver's license or permit, the records of the examiner of drivers shall be updated to reflect that action within ten days. Any disqualification imposed in accordance with section 286-240(j) and transmitted by the Federal Motor Carrier Safety Administration shall become a part of the driving record. After suspending, revoking, or canceling a nonresident commercial driver's license or permit, the examiner of drivers shall notify the licensing authority of the state which issued the commercial driver's license within ten days."

SECTION 10. Section 286-244, Hawaii Revised Statutes, is amended to read as follows:

"§286-244 Notification of traffic convictions. ~~[Within ten days after receiving a report of the conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the examiner of drivers shall notify the driver's licensing authority in the licensing state of the conviction.]~~ (a) Whenever a person who holds a commercial driver's license from another state is convicted of a violation of any state or county law relating to motor vehicle traffic control, other than a parking violation, in any type of vehicle, the examiner of drivers shall notify the licensing entity in the state where the driver is licensed of this conviction within the time period specified in subsection (c).

(b) Whenever a person who does not hold a commercial driver's license but is licensed to drive by another state is convicted of a violation in a commercial motor vehicle of any state or county law relating to motor vehicle traffic control, other than a parking violation, the examiner of drivers shall notify the licensing entity in the state where the driver is licensed of this conviction within the time period specified in subsection (c).

(c) The notification of a traffic violation conviction shall be made within thirty days of the conviction. Beginning on September 30, 2008, the notification shall be made within ten days of the conviction."

SECTION 11. Section 286-245, Hawaii Revised Statutes, is amended to read as follows:

“§286-245 Driving record information to be furnished. [Notwithstanding any other provision of law to the contrary, the state judiciary or the city and county of Honolulu shall furnish full information regarding the driving record of any person:

- (1) To the driver's license administrator of any other state, Mexico, or province or territory of Canada, requesting that information; and
- (2) To the person's employer or prospective employer.]
- (a) All convictions, disqualifications, and other licensing actions for violations of any state or county law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a holder of a commercial driver's license shall be recorded and maintained as part of the driver's record.
- (b) All convictions, disqualifications, and other licensing actions for violations of any state or county law relating to motor vehicle traffic control, other than a parking violation, committed while the driver was operating a commercial motor vehicle and was required to have a commercial driver's license shall be recorded and maintained as part of the driver's record.
- (c) No commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, shall be expunged or subject to deferred imposition of judgment, nor shall an individual be allowed to enter into a diversion program that would prevent the conviction from appearing on the driver's driving record, whether the driver was convicted for an offense committed in this state or another state.
- (d) The state judiciary and the examiner of drivers shall make available information from any driver's record required by this section to the greatest extent possible, to the users designated in subsection (f), or their authorized agent, within ten days of:
 - (1) Receiving the conviction or disqualification information from another state; or
 - (2) Receiving the conviction for a violation occurring in this State.
- (e) All convictions, disqualifications, and other licensing actions for violations shall be retained on each driver's record for at least three years or longer as required under title 49 Code of Federal Regulations section 384.231(d).
- (f) Only the following users or their authorized agents may obtain a driver's record:
 - (1) States may receive all information regarding any driver's record;
 - (2) The Secretary of Transportation may receive all information regarding any driver's record;
 - (3) A driver may receive only information related to that driver's record; and
 - (4) A motor carrier or prospective motor carrier may receive all information regarding a driver's history record, or the driver's driving record of a prospective driver; provided that the request is made by the driver.”

SECTION 12. Section 286-249, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A driver who is convicted of violating an out-of-service order shall be fined not less than [\\$1,000] \$1,100 nor more than [\\$2,500] \$2,750 in addition to the driving disqualification of subsection (a)(1)[-] and section 286-240(g) and (h).”

SECTION 13. Section 291E-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a)(1) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue a conditional license

permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period; provided that one or more of the following conditions are met:

- (A) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
- (B) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41[-]; or¹
- (2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:
 - (A) A respondent whose license, during the conditional license permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the respondent is requesting a conditional license permit under this section; [øf]
 - (B) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable[-]; or
 - (C) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).''

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on September 30, 2005; provided that sections 1, 5, and the amendments made to section 286-239(c), Hawaii Revised Statutes, by section 7(1) of this Act shall take effect on October 18, 2004.

(Approved June 3, 2004.)

Note

- 1. Should be underscored.

ACT 104

S.B. NO. 2887

A Bill for an Act Relating to Interstate Insurance Compact.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. State insurance regulators across the nation recognize that the financial services industry is changing. Many products sold by life insurers have evolved to become primarily investment products. Consequently, life insurers increasingly face direct competition from products offered by depository institutions and securities firms. Because depository institutions and securities firms are able to sell products nationally, often without any prior regulatory review, they are able to bring these new products to market more quickly and without the added expense of meeting different requirements in different states.

The National Association of Insurance Commissioners and state insurance regulators have worked diligently over the past two years to identify the issues in this area and come up with possible solutions to reflect the new market realities. Regulators now believe there is a way to develop a more efficient review process for

insurance and annuity products—one that will help insurers better compete in the marketplace while maintaining a high level of protection for consumers. Regulators feel that the best way to accomplish this is through the creation of an interstate compact.

The purpose of this Act is to adopt the National Association of Insurance Commissioners' Interstate Insurance Product Regulation Compact. For consumers, there will be high product standards and quicker access to a broader choice of investment products. State insurance regulators will be able to share best practices and use their resources more effectively, and insurers will be able to enjoy a more level playing field in competing with banks and securities firms.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE
INTERSTATE INSURANCE PRODUCT REGULATION COMPACT**

§431: -101 Scope. (a) The interstate insurance product regulation compact is intended to help states join together to establish an interstate compact to regulate designated insurance products. Pursuant to the terms and conditions of this article, the State seeks to join with other states by enacting the interstate insurance product regulation compact, and thus become a member of the interstate insurance product regulation commission.

(b) The purposes of this compact are, through means of joint and cooperative action among the compacting states:

- (1) To promote and protect the interest of consumers of individual and group annuity, life insurance, long-term care, and disability income products;
- (2) To develop uniform standards for insurance products covered under the compact;
- (3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states;
- (4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
- (5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;
- (6) To create the interstate insurance product regulation commission; and
- (7) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

§431: -102 Definitions. As used in this article, the following definitions apply:

“Advertisement” means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

“Bylaws” means those bylaws established by the commission for its governance, or for directing or controlling the commission’s actions or conduct.

“Commission” means the interstate insurance product regulation commission established by this compact.

“Commissioner” means the chief insurance regulatory official of a state.

“Compacting state” means any state that has enacted this compact legislation and that has not withdrawn pursuant to section 431: -119, or been terminated pursuant to section 431: -120.

“Insurer” means any entity licensed by a state to issue contracts of insurance for those lines of insurance covered by this article.

“Member” means the person chosen by a compacting state, as its representative to the commission, or the person’s designee.

“Noncompacting state” means any state that is not at the time a compacting state.

“Operating procedures” means procedures adopted by the commission implementing a rule, uniform standard, or a provision of this compact.

“Product” means the form of a policy or contract, including any application, endorsement, or related form that is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

“Rule” means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed pursuant to section 431: -112 of this compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

“State” means any state, district, or territory of the United States of America.

“Third-party filer” means an entity that submits a product filing to the commission on behalf of an insurer.

“Uniform standard” means a standard adopted by the commission for a product line, pursuant to section 431: -112 of this compact, and shall include all of the product requirements in aggregate; provided that each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

§431: -103 Establishment of the commission and venue. (a) The compacting states hereby create and establish a joint public entity known as the interstate insurance product regulation commission. Pursuant to section 431: -112, the commission may develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards; provided it is not intended that the commission be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed.

(b) The commission is a body corporate and politic and an instrumentality of the compacting states.

(c) The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

(d) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

§431: -104 Powers of the commission. The commission may:

- (1) Adopt rules pursuant to section 431: -112, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this article;
- (2) Exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisements related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for such products filed with the commission; provided that a compacting state may opt out of such uniform standard pursuant to section 431: -112, to the extent and in the manner provided in this article; provided further that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the National Association of Insurance Commissioners long-term care insurance model act or the long-term care insurance model regulation adopted by the National Association of Insurance Commissioners require amending of the uniform standards established by the commission for long-term care insurance products;
- (3) Receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;
- (4) Receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission may require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding on the compacting states to the extent and in the manner provided in the compact;
- (5) Exercise its rulemaking authority and designate products and advertisements that may be subject to a self-certification process without the need for prior approval by the commission;
- (6) Adopt operating procedures pursuant to section 431: -112, which shall be binding on the compacting states to the extent and in the manner provided in this article;
- (7) Bring and prosecute legal proceedings or actions in its name as the commission; provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;
- (8) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;
- (9) Establish and maintain offices;
- (10) Purchase and maintain insurance and bonds;

- (11) Borrow, accept, or contract for services of personnel, including but not limited to employees of a compacting state;
- (12) Hire employees, professionals, or specialists, and elect or appoint officers, determine their qualifications, fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;
- (13) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, use, and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety;
- (14) Lease, purchase, and accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;
- (15) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (16) Remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures;
- (17) Enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws;
- (18) Provide for dispute resolution among compacting states;
- (19) Advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact;
- (20) Provide advice and training to those personnel in state insurance departments responsible for product review, and be a resource for state insurance departments;
- (21) Establish a budget and make expenditures;
- (22) Borrow money;
- (23) Appoint committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws;
- (24) Provide and receive information from, and cooperate with law enforcement agencies;
- (25) Adopt and use a corporate seal; and
- (26) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with state regulation of the business of insurance.

§431: -105 Appointment to commission. The governor, with the advice and consent of the senate, shall appoint the member of the commission that represents the State.

§431: -106 Membership; voting; bylaws. (a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in such capacity under or pursuant to the applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein such vacancy exists. Nothing herein shall be construed to affect the manner in which a

compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the adoption of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

(c) The commission, by a majority of the members, shall prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including but not limited to:

- (1) Establishing the fiscal year of the commission;
- (2) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;
- (3) Providing reasonable standards and procedures for the establishment and meetings of other committees, and governing any general or specific delegation of any authority or function of the commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting;
- (5) Establishing the titles, duties, and authority, and reasonable procedures for the election, of the officers of the commission;
- (6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;
- (7) Adopting a code of ethics to address permissible and prohibited activities of commission members and employees; and
- (8) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

§431: -107 Management committee; officers and personnel. (a) A management committee comprising no more than fourteen members shall be established as follows:

- (1) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the National Association of Insurance Commissioners for the prior year;
- (2) Four members from compacting states with at least two per cent of the market based on the premium volume described above, other than the

six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

- (3) Four members from those compacting states with less than two per cent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the National Association of Insurance Commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

- (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;
- (2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, subject to approval by the full commission, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;
- (3) Overseeing the offices of the commission; and
- (4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the commission.

(c) The commission shall annually elect officers from the management committee with each having such authority and duties as may be specified in the bylaws.

(d) The management committee, subject to the approval of the commission, may appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

§431: -108 Legislative and advisory committees. (a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission including the management committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall be comprised of consumer representatives independent of the insurance industry, and the other, of insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

§431: -109 Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

§431: -110 Qualified immunity; defense; indemnification. (a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official

capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit such person from retaining counsel; provided further that the actual or alleged act, error, or omission did not result from the intentional or wilful and wanton misconduct of any such person.

(c) The commission shall indemnify and hold harmless the member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional or wilful and wanton misconduct of any such person.

§431: -111 Meetings and acts of the commission. (a) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(b) Each member of the commission may cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(c) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

§431: -112 Rules and operating procedures; rulemaking functions of the commission and rejection of uniform standards. (a) The commission shall adopt reasonable rules, including uniform standards, and operating procedures to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this article or the powers granted hereunder, such action by the commission shall be invalid and have no force and effect.

(b) Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. In adopting a uniform standard, the commission shall consider fully all submitted materials and issue a concise explanation of its decision.

(c) A uniform standard shall become effective ninety days after its adoption by the commission or such later date as the commission may determine; provided

that a compacting state may “opt out” of a uniform standard as provided in this article. “Opt out” shall be defined as any action by a compacting state to decline to adopt or participate in an adopted uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(d) A compacting state may opt out of a uniform standard, either by legislation or by rule adopted by the insurance commissioner. If a compacting state elects to opt out of a uniform standard by rule, it shall:

- (1) Give written notice to the commission no later than ten business days after the later of the adoption of the uniform standard or the state becoming a compacting state; and
- (2) Find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner shall consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:
 - (A) The intent of the legislature to participate in, and reap the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this Act; and
 - (B) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently adopted.

(e) If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt out legislation is enacted into law or the opt out regulation becomes effective.

Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under section 431: -119 for withdrawals.

(f) If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively

extended by the commission; provided that a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances that warrant a continuance of the stay, including but not limited to the existence of a legal challenge that prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

(g) Not later than thirty days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure; provided that the filing of such petition shall not stay or otherwise prevent such rule or operating procedure from becoming effective unless there is a finding that there is a substantial likelihood of success on behalf of the party filing such petition. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if such rule or operating procedure represents a reasonable exercise of the commission's authority.

§431: -113 Commission records and enforcement. (a) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(b) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission; provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and provided further that, except as otherwise expressly provided in this article, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(c) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify such noncomplying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If the noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in section 431: -120.

(d) The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise the commissioner's authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

- (1) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact, except upon a final order of the commission, issued at the request of a

- commissioner after prior notice to the insurer and an opportunity for hearing before the commission; and
- (2) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, shall authorize the action; provided that authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

§431: -114 Dispute resolution. The commission, upon the request of a member, shall attempt to resolve any disputes or other issues that are subject to this compact and that may arise between two or more compacting states, or between compacting states and noncompacting states, and shall adopt an operating procedure providing for resolution of such disputes.

§431: -115 Product filing and approval. (a) Insurers and third-party filers seeking to have a product approved by the commission shall file such product with, and pay applicable filing fees to, the commission. Nothing in this article shall be construed to restrict or otherwise prevent an insurer from filing its product in any state wherein such insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the state where filed.

(b) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision herein to the contrary, the commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets that may be contained in a product filing or supporting information.

(c) Any product approved by the commission may be sold or otherwise issued in compacting states for which the insurer is legally authorized to do business.

§431: -116 Review of commission decisions regarding product filings. (a) Not later than thirty days after the commission has given notice that it has disapproved a product or advertisement filed with the commission, the insurer or third party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing the review panel and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, shall be subject to judicial review in accordance with section 431: -103.

(b) The commission may monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product or advertisement does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in this section.

§431: -117 Finance. (a) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, com-

pacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

(b) The commission shall collect a filing fee from each insurer and third party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(c) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in rules adopted in accordance with section 431: -112.

(d) The commission shall be exempt from all taxation in and by the compacting states.

(e) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(f) The commission shall keep complete and accurate accounts of all its internal receipts (including grants and donations) and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of such independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of such independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request; provided that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(g) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

§431: -118 Compacting states; effective date; amendment. (a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states; provided the commission shall become effective for purposes of adopting uniform standards for reviewing and giving approval or disapproval of products filed with the commission that satisfy the applicable uniform standards only after twenty-six states are compacting states or, alternatively, the compact is enacted by states representing greater than forty per cent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the National Association of Insurance Commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(c) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact such amendment into law.

§431: -119 Withdrawal. (a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a

compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute that enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state, unless the approval is rescinded by the withdrawing state as provided in subsection (e).

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the withdrawing state's intent to withdraw within ten days of its receipt thereof.

(e) The withdrawing state shall be responsible for its share of obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state's reenactment of the compact.

§431: -120 Default. (a) If the commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly adopted rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on such defaulting party shall be suspended from the effective date of default as fixed by the commission. The grounds for default include but are not limited to failure of a compacting state to perform such obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any other advertisement in connection with the product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to section 431: -119(a).

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact by the state seeking reinstatement.

§431: -121 Dissolution of compact. (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact shall be void and shall be of no further effect, the business and affairs of the commission shall be wound up, and any surplus funds shall be distributed in accordance with the bylaws.

§431: -122 Severability and construction. (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

§431: -123 Other laws. (a) Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subsection (b).

(b) For any product approved by or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission that governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

- (1) The access of any person to state courts;
- (2) Remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;
- (3) State law relating to the construction of insurance contracts; or
- (4) The authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

§431: -124 Binding effect of the compact. (a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding such meaning or interpretation.

(d) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the commission shall be ineffective as to such compacting state, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 2 to be appropriately designated and to read as follows:

"§431:2- Standards for commissioner. When reviewing a uniform standard, the commissioner shall consider the following standards in determining whether to opt out of a uniform standard:

- (1) Whether the public interest is being served or protected;

- (2) Whether the reasonable expectations of the consumer will be met;
- (3) Whether the uniform standard is or will require a reasonably clear, plain English communication to the consumer;
- (4) Whether the consumer will be protected in a typical transaction where the consumer may have less power, information, or understanding of the meaning or consequences of the transaction, or any part thereof, than the insurer or producer;
- (5) The long-term effects of the uniform standard;
- (6) The possible effects of the uniform standard on the financial condition of insurers;
- (7) Confidentiality requirements in state or federal law;
- (8) State and federal constitutional issues;
- (9) The impact of the uniform standard on any provision of the insurance code or any state or federal law;
- (10) The uniform standard's particular impact in the State and any conditions unique to the State; and
- (11) The integration of the uniform standard with state or federal law and any possible conflicts with such laws."

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on January 1, 2005.

(Approved June 3, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 105

S.B. NO. 3156

A Bill for an Act Relating to Emergency Medical Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify that the State is not liable for the decision to establish or not establish emergency aeromedical services in any particular county or counties, as provided in section 321-224, Hawaii Revised Statutes, which was enacted in 2003. The legislature feels that the decision to establish or not establish emergency aeromedical services in any county or counties is viewed as a discretionary function of government and, as such, the State is immune from liability. Although both statutory and case law appear to be clear, because of the urgency to establish this service in Maui county, to eliminate any doubt, this Act expressly provides that the State shall not be liable for claims based on the failure to establish emergency aeromedical services in every county of the State.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part XVIII to be appropriately designated and to read as follows:

“§321- Immunity and limitation on liability for emergency aeromedical services. The State shall not be liable for any claim of injury or death based on a failure to establish or continue emergency aeromedical services in any part of the State or in any county, including the failure of the department of health to establish emergency aeromedical services.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 9, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 106

S.B. NO. 2791

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Montessori School of Maui, Inc.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and welfare.

Montessori School of Maui, Inc., began with eight students in 1978, as a private, nonprofit, nonsectarian preschool dedicated to the educational principles developed by Dr. Montessori. It now serves one hundred ninety students ages eighteen months to fourteen years. Its mission is “to educate the human potential,” by providing students with the academic foundation that encompasses cultural, social, aesthetic, historical, and physical understanding, which prepares them for stewardship in the world.

The proposed expansion of Montessori School of Maui, Inc., that may be supported by the issuance of special purpose revenue bonds includes the development of:

- (1) A multipurpose halau to serve as a central meeting and gathering place for the school community and the community at large;
- (2) A middle school facility designed for and adapted to the needs of adolescent children, which provides a suitable environment for economic and social literacy programs;
- (3) An upper elementary classroom to remove students from an inadequately ventilated, cramped modular building and allow for an increase in the number of students; and
- (4) Sitework and infrastructure to support additional campus expansion.

The purpose of this Act is to authorize the issuance of special purpose revenue bonds for Montessori School of Maui to finance or refinance the planning, acquisition, construction, or improvement of its educational facilities.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$10,000,000, in one or more series, for the purpose of assisting Montessori School of Maui, Inc., a Hawaii corporation, to finance or refinance the planning, acquisition, construction or improvement of its educational facilities. The legislature finds and determines that the planning, acquisition, construction, or improvement constitutes a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to not-for-profit private nonsectarian and sectarian elementary schools and secondary schools.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 7. This Act shall take effect upon approval.

(Approved June 9, 2004.)

ACT 107

S.B. NO. 2790

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Haleakala Waldorf School.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Haleakala Waldorf School is excited about the potential opportunity to better serve the young people of Maui through a program that may include land acquisition, building, and debt retirement made possible by the issuance of special purpose revenue bonds. The school's current 2.4 acre site, beginning about one hundred years ago, was the home of Kealahou Public School. It has nine contiguous neighbors, privately owned lots occupied by cottages and houses. Purchase of one or more of these parcels would provide the school with additional parking, enhanced access to campus, enhanced early childhood programs, and an athletic field.

The Waldorf philosophy of education provides for a special process that recognizes that the developmental focus in the high school years shifts to advanced thinking, reliance on abstractions, and critical judgment. A building program would enable Haleakala Waldorf School to continue past the eighth grade into high school, to more fully nurture this developmental shift. The school anticipates phasing in the building program to correspond with one new grade added each year over the course of four years. A modest amount of debt, arising from the mortgage on three units of faculty housing on an adjoining lot, may also be retired under this issuance.

The purpose of this Act is to authorize the issuance of special purpose revenue bonds and appropriate funding for Haleakala Waldorf School to finance or refinance the planning, acquisition, construction, or improvement of its educational facilities.

SECTION 2. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and welfare.

SECTION 3. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$9,450,000, in one or more series, for the purpose of assisting Haleakala Waldorf School, a Hawaii corporation, to finance or refinance the planning, acquisition, construction, or improvement of its educational facilities. The legislature finds and determines that the planning, acquisition, construction, or improvement constitutes a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to not-for-profit private nonsectarian and sectarian elementary schools and secondary schools.

SECTION 4. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 3 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 3. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately

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authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 7. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 8. This Act shall take effect upon approval.

(Approved June 9, 2004.)

ACT 108

S.B. NO. 2538

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Iolani School.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$30,000,000, in one or more series, for the purpose of assisting Iolani School, a Hawaii nonprofit corporation, to finance and refinance the planning, construction, and improvements of its educational facilities in the State. The legislature finds and determines that the planning, construction, and improvements of facilities of Iolani School constitute a project for purposes of part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in a total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be

necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 7. This Act shall take effect upon approval.

(Approved June 9, 2004.)

ACT 109

S.B. NO. 3086

A Bill for an Act Relating to Special Purpose Revenue Bonds for Island Pacific Academy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$20,000,000, in one or more series, for the purpose of assisting Island Pacific Academy to finance or refinance the planning and construction of its educational facilities. The legislature finds and determines that the planning and construction constitute a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit private nonsectarian and sectarian elementary and secondary school that serves the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities serving the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is further authorized, from time to time, including times subsequent to June 30, 2009, to issue refunding special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section. Such refunding special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 and may be combined into a single issue of refunding special purpose revenue bonds, in one or more series, with refunding special purpose revenue bonds to be issued by the department to refund any other special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 7. This Act shall take effect upon approval.

(Approved June 9, 2004.)

ACT 110**S.B. NO. 2671**

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for the Congregation of Christian Brothers, Inc. dba Damien Memorial High School.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and welfare.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$10,000,000, in one or more series, for the purpose of assisting The Congregation of Christian Brothers, Inc. dba Damien Memorial High School, a Hawaii corporation, to finance or refinance the planning, acquisition, construction, or improvement of its educational facilities. The legislature finds and determines that the planning, acquisition, construction, or improvement constitutes a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to not-for-profit private nonsectarian and sectarian elementary schools and secondary schools.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose

revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 7. This Act shall take effect upon approval.

(Approved June 9, 2004.)

ACT 111

H.B. NO. 2578

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Honolulu Seawater Air Conditioning LLC Projects on the Island of Oahu.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that support for the development of renewable and efficient energy systems in the State, which is geographically isolated from sources of oil, continues to be in the public interest.

The legislature further finds that Honolulu Seawater Air Conditioning LLC proposes to build a seawater air conditioning/thermal energy storage district cooling system on the island of Oahu.

The legislature finds that Honolulu Seawater Air Conditioning LLC is engaged in the planning, design, and construction of a seawater air conditioning/thermal energy storage district cooling facility and chilled water distribution system in downtown Honolulu using cold, deep seawater as the primary cooling source.

The legislature further finds that the issuance of special purpose revenue bonds under this Act to assist Honolulu Seawater Air Conditioning LLC in constructing that portion of the district cooling project consisting of its seawater system will make the development of such a seawater air conditioning/thermal energy storage district cooling system more economically feasible and provide numerous benefits, including the following:

- (1) Providing customers with reduced and stable cooling costs;

- (2) Using cold, deep seawater—an abundant, indigenous, renewable energy resource—to provide more than seventy per cent of the cooling load;
- (3) Eliminating the need for cooling towers and, as a result, reducing potable water use, toxic chemical use, and the production of sewage;
- (4) Greatly reducing the use of harmful chemicals (refrigerants) used in conventional cooling systems;
- (5) Providing energy savings of seventy per cent or more, compared to conventional air conditioning systems;
- (6) Having lower operating and maintenance costs than individual building air conditioning systems;
- (7) Eliminating the need for more than 0.75 kilowatts of electricity generation capacity for each ton of cooling capacity;
- (8) Generating millions of dollars in construction project spending. In addition to construction jobs, a significant number of long-term, well-paid jobs will also be created. Other local economic development benefits will accrue from money that stays in Hawaii and is not used to purchase oil; and
- (9) Helping the State, the city and county of Honolulu, and the federal government to meet the goals and mandates for energy efficiency and renewable energy use.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$32,000,000, in one or more series, for the purpose of assisting Honolulu Seawater Air Conditioning LLC, a Hawaii corporation, with one or more of the following:

- (1) The establishment of a cold seawater supply and warmed seawater disposal system, including but not limited to the seawater pipelines and pumping station, through which chilled water will be produced and moved to buildings that are to be connected to the seawater air conditioning/thermal energy storage district cooling system; and
- (2) The financing, refinancing, or both, of the costs related to the planning, design, and construction of the seawater system described above, including costs of construction, renovation, equipping, and purchasing tangible assets (including land and easements for the shoreline crossing, pumping facility, and other improvements) comprising such a seawater system.

SECTION 3. The legislature hereby finds and determines that the activity and facilities of Honolulu Seawater Air Conditioning LLC constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 4. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose

revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for multi-project programs. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 7. This Act shall take effect on July 1, 2004.

(Approved June 10, 2004.)

ACT 112

H.B. NO. 2170

A Bill for an Act Relating to Special Purpose Revenue Bonds for Rehabilitation Hospital of the Pacific.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$20,000,000, in one or more series, for the purpose of assisting the Rehabilitation Hospital of the Pacific, a Hawaii nonprofit corporation, in financing construction improvements and expanding in-patient and out-patient service capabilities to meet requirements. The legislature hereby finds and determines that the activity and facilities of the Rehabilitation Hospital of the Pacific constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a health care facility.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist health care facilities.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall

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comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 10, 2004.)

ACT 113

H.B. NO. 2511

A Bill for an Act Relating to Income Tax Withholding.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to conform the state withholding tax remittance due date for employers with an annual state withholding tax liability exceeding \$40,000, to the remittance due date required under federal employment tax provisions. The state remittance due date will change from monthly to “semi-weekly” under this Act.

SECTION 2. Section 231-9.9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director of taxation is authorized to require every person whose tax liability for any one taxable year exceeds \$100,000 and who files a tax return for any tax, including consolidated filers, to remit taxes by one of the means of electronic funds transfer approved by the department[.]; provided that for withholding taxes under section 235-62, electronic funds transfers shall apply to annual tax liabilities that exceed \$40,000.”

SECTION 3. Section 235-62, Hawaii Revised Statutes, is amended to read as follows:

“**§235-62 Return and payment of withheld taxes.** (a) Every employer required by this chapter to withhold taxes on wages paid in any month shall make a return of such wages to the department of taxation on or before the fifteenth day of the calendar month following the month for which the taxes have been withheld; provided that each employer required to make a return under this section whose liability for taxes withheld exceeds [~~\$100,000~~] \$40,000 a year, shall ~~[make a return of wages and] pay the taxes withheld to the department on or before [the tenth day of the calendar month following the month for which the taxes have been withheld.] the following Wednesday if wages were paid on the immediately preceding Wednesday, Thursday, or Friday; or on or before the following Friday if wages were paid on the immediately preceding Saturday, Sunday, Monday, or Tuesday.~~

(b) The return shall be in such form, including computer printouts and the like, and contain such information as may be prescribed by the director of taxation. The return shall be filed with the collector of the taxation district in which the employer has the employer’s principal place of business or with the director at Honolulu if the employer has no place of business in the State.

(c) Every return required under this section shall be accompanied by a remission of the complete amount of tax withheld, as reported in the return.

(d) If the director believes collection of the tax may be in jeopardy, the director may require any person required to make a return under this section to make such return and pay such tax at any time.

(e) The director may grant permission to employers, whose liability to pay over the taxes withheld as provided in this section shall not exceed \$5,000 a year, to make returns and payments of the taxes due on a quarterly basis during the calendar year, the returns and payments to be made on or before the fifteenth day of the calendar month after the close of each quarter, to wit, on or before April 15, July 15, October 15, and January 15. The director may grant permission to employers to make monthly payments based on an estimated quarterly liability; provided that the employer files a reconciliation return on or before the fifteenth day of the calendar month after the close of each quarter during the calendar year as provided by this section. The director, for good cause, may extend the time for making returns and payments, but not beyond the fifteenth day of the second month following the regular due date of the return. With respect to wages paid out of public moneys, the director, in the director's discretion, may prescribe special forms for, and different procedures and times for the filing of, the returns by employers paying the wages, or may waive the filing of any returns upon the conditions and subject to rules the director may prescribe."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall apply to withholding requirements for payroll periods beginning on or after December 31, 2004.

(Approved June 10, 2004.)

ACT 114

S.B. NO. 2994

A Bill for an Act Relating to the Use Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify current use tax laws in light of *Baker & Taylor, Inc. v. Kawafuchi*, S.C. 23376 (Jan. 14, 2004) and administrative rule 18-237-13-02.01 by:

- (1) Clarifying when a seller is subject to the 0.5 per cent use tax;
- (2) Restoring the imposition of taxes on goods purchased both within and outside the State; and
- (3) Clarifying that the use tax applies to sellers who acquire goods from outside the State and import the product for sale or resale in the State.

SECTION 2. Section 238-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "import" to read:

"“Import” (or any nounal, verbal, adverbial, adjective, or other equivalent of the term) includes:

- (1) The importation into the State of tangible property, services, or contracting owned, purchased from an unlicensed seller, or however acquired, from any other part of the United States or its possessions or from any foreign country, whether in interstate or foreign commerce, or both[-]; and

- (2) The sale and delivery of tangible personal property owned, purchased from an unlicensed seller, or however acquired, by a seller who is or should be licensed under the general excise tax law from an out-of-state location to an in-state purchaser, regardless of the free on board point or the place where title to the property transfers to the purchaser."

2. By amending the definition of "purchaser" and "importer" to read:

""Purchaser" means any person purchasing property, services, or contracting and "importer" means any person importing property, services, or contracting[;], regardless if at the time of importation, the property, services, or contracting is owned by the importer, purchased from an unlicensed seller, or however acquired; provided that the terms "purchaser" and "importer" shall not include the State, its political subdivisions, or wholly owned agencies or instrumentalities of the State or a political subdivision; or the United States, its wholly owned agencies or instrumentalities, or any person immune from the tax imposed by this chapter under the Constitution and laws of the United States but the terms shall include national banks."

3. By amending the definition of "use" to read:

""Use" (and any nounal, verbal, adjectival, adverbial, and other equivalent form of the term) herein used interchangeably means any use, whether the use is of such nature as to cause the property, services, or contracting to be appreciably consumed or not, or the keeping of the property or services for such use or for sale, [and shall include] the exercise of any right or power over tangible or intangible personal property incident to the ownership of that property, and shall include control over tangible or intangible property by a seller who is licensed or who should be licensed under chapter 237, who directs the importation of the property into the state for sale and delivery to a purchaser in the State, liability and free on board (FOB) to the contrary notwithstanding, regardless of where title passes, but the term "use" shall not include:

- (1) Temporary use of property, not of a perishable or quickly consumable nature, where the property is imported into the State for temporary use (not sale) therein by the person importing the same and is not intended to be, and is not, kept permanently in the State. For example, without limiting the generality of the foregoing language:
 - (A) In the case of a contractor importing permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, the equipment out of the State upon completing the contract;
 - (B) In the case of moving picture films imported for use in theaters in the State with intent or under contract to transport the same out of the State after completion of such use; and
 - (C) In the case of a transient visitor importing an automobile or other belongings into the State to be used by the transient visitor while therein but which are to be used and are removed upon the transient visitor's departure from the State;
- (2) Use by the taxpayer of property acquired by the taxpayer solely by way of gift;
- (3) Use which is limited to the receipt of articles and the return thereof, to the person from whom acquired, immediately or within a reasonable time either after temporary trial or without trial;
- (4) Use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for the vessels;

- (5) The use or keeping for use of household goods, personal effects, and private automobiles imported into the State for nonbusiness use by a person who:
 - (A) Acquired them in another state, territory, district, or country;
 - (B) At the time of the acquisition was a bona fide resident of another state, territory, district, or country;
 - (C) Acquired the property for use outside the State; and
 - (D) Made actual and substantial use thereof outside this State; provided that as to an article acquired less than three months prior to the time of its importation into the State it shall be presumed, until and unless clearly proved to the contrary, that it was acquired for use in the State and that its use outside the State was not actual and substantial;
- (6) The leasing or renting of any aircraft or the keeping of any aircraft solely for leasing or renting to lessees or renters using the aircraft for commercial transportation of passengers and goods or the acquisition or importation of any such aircraft or aircraft engines by any lessee or renter engaged in interstate air transportation. For purposes of this paragraph, "leasing" includes all forms of lease, regardless of whether the lease is an operating lease or financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102;
- (7) The use of oceangoing vehicles for passenger or passenger and goods transportation from one point to another within the State as a public utility as defined in chapter 269;
- (8) The use of material, parts, or tools imported or purchased by a person licensed under chapter 237 which are used for aircraft service and maintenance, or the construction of an aircraft service and maintenance facility as those terms are defined in section 237-24.9;
- (9) The use of services or contracting imported for resale where the contracting or services are for resale, consumption, or use outside the State pursuant to section 237-29.53(a);
- (10) The use of contracting imported or purchased by a contractor as defined in section 237-6 who is:
 - (A) Licensed under chapter 237;
 - (B) Engaged in business as a contractor; and
 - (C) Subject to the tax imposed under section 238-2.3; and
- (11) The use of property, services, or contracting imported by foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes.

With regard to purchases made and distributed under the authority of chapter 421, a cooperative association shall be deemed the user thereof."

SECTION 3. Section 238-2, Hawaii Revised Statutes, is amended to read as follows:

"§238-2 Imposition of tax[;] on tangible personal property; exemptions.

There is hereby levied an excise tax on the use in this State of tangible personal property which is imported[;—or] by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

- (1) If the importer or purchaser is licensed under chapter 237 and is:

- (A) A wholesaler or jobber importing or purchasing for purposes of sale or resale; or
- (B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as the manufacturer or as a wholesaler, and not as a retailer,

there shall be no tax; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) such amount of tax as the wholesaler, jobber, or manufacturer shall, to the satisfaction of the director, establish to have been paid by the wholesaler, jobber, or manufacturer to the director with respect to property which has been used by the wholesaler, jobber, or manufacturer for the purposes stated in this paragraph;

- (2) If the importer or purchaser is licensed under chapter 237 and is:
 - (A) A retailer or other person importing or purchasing for purposes of sale or resale, not exempted by paragraph (1);
 - (B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold at retail in this State, in such manner as to result in a further tax on the activity of the manufacturer in selling such products at retail;
 - (C) A contractor importing or purchasing material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses;
 - (D) A person engaged in a service business or calling as defined in section 237-7, or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, in which the import or purchase of tangible personal property would have qualified as a sale at wholesale as defined in section 237-4(a)(8) had the seller of the property been subject to the tax in chapter 237; or
 - (E) A publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials,

the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property; and

(3) In all other cases, four per cent of the value of the property.

For purposes of this section, tangible personal property is property that is imported by the taxpayer for use in this State, notwithstanding the fact that title to the property, or the risk of loss to the property, passes to the purchaser of the property at a location outside this State.

SECTION 4. Section 238-2.3, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“§238-2.3 Imposition of tax on imported services[;] or contracting; exemptions.”

SECTION 5. Section 238-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of the taxes due under sections [238-2(3)] 238-2 and 238-2.3, every seller having in the State, regularly or intermittently, any property, tangible or intangible, any place of business, or any representation as hereinabove defined, (and irrespective of the seller’s having or not having qualified to do business in the State) shall, if the seller makes sales of property, services, or contracting for use in the State (whether or not the sales are made in the State), collect from the purchaser the taxes imposed by sections [238-2(3)] 238-2 and 238-2.3, on the use of the property, services, or contracting so sold by the seller[.], if the seller is not subject to the use tax under this chapter on the importation of the property into the State. The collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the director of taxation upon the application of the seller, and the seller shall give to the purchaser a receipt therefor in the manner and form prescribed by the director; provided that this subsection shall not apply to vehicles registered under section 286-50.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall take effect retroactive to taxable years beginning after December 31, 1998.

(Approved June 10, 2004.)

ACT 115

S.B. NO. 2990

A Bill for an Act Relating to the Integrated Tax Information Management Systems Acquisition by the Department of Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 231-3.2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This section shall be repealed on July 1, [2004.] 2005.”

SECTION 2. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

“§237-31 Remittances. All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier’s check, money order, or

certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that:

- (1) The sum from all general excise tax revenues realized by the State that represents the difference between \$45,000,000 and the proceeds from the sale of any general obligation bonds authorized for that fiscal year for the purposes of the state educational facilities improvement special fund shall be deposited in the state treasury in each fiscal year to the credit of the state educational facilities improvement special fund;
- (2) A sum, not to exceed \$5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund; and
- (3) A sum, not to exceed the amount necessary to meet the obligations of the integrated tax information management systems performance-based contract may be retained and deposited in the state treasury to the credit of the integrated tax information management systems special fund. The sum retained by the director of taxation for deposit to the integrated tax information [{}management{}] systems special fund for each fiscal year shall be limited to amounts appropriated by the legislature. This paragraph shall be repealed on July 1, [2004.] 2005."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2004.

(Approved June 10, 2004.)

ACT 116

S.B. NO. 1318

A Bill for an Act Relating to Business Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the

application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
 - (2) Any person subject to chapter 485 has complied with that chapter;
 - (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
 - (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
 - (5) Any person subject to chapter 467B has complied with that chapter;
- and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 2. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

“§92-28 State service fees; increase or decrease of. Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 482E, 485, 501, 502, 505, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues under the chapters listed in paragraph (1) that are established by the department of commerce and consumer affairs shall apply to fees or nontax revenues established by statute or rule;
- [~~(2)~~] (3) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapters 304, 305, 306, and 308 shall be subject to the approval of the board of regents; provided that the board’s approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;
- [~~(3)~~] (4) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
- [~~(4)~~] (5) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and
- [~~(5)~~] (6) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5.”

SECTION 3. Section 414-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$100;
- (2) Articles of amendment, [~~\$50;~~] \$25;
- (3) Restated articles of incorporation, [~~\$50;~~] \$25;
- (4) Articles of conversion or merger, [~~\$200;~~] \$100;
- (5) Articles of merger (subsidiary corporation), [~~\$100;~~] \$50;
- (6) Articles of dissolution, [~~\$50;~~] \$25;
- (7) Annual report of domestic and foreign corporations organized for profit, \$25;
- (8) Agent’s statement of change of registered office, [~~\$50~~] \$25 for each affected domestic corporation or foreign corporation, except if simultaneous filings are made, the fee is reduced to \$1 for each affected domestic corporation or foreign corporation in excess of two hundred;

- (9) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, [~~\$50;~~] \$25;
 - (10) Application for a certificate of authority, \$100;
 - (11) Application for a certificate of withdrawal, [~~\$50;~~] \$25;
 - (12) Reservation of corporate name, [~~\$20;~~] \$10;
 - (13) Transfer of reservation of corporate name, [~~\$20;~~] \$10;
 - (14) Good standing certificate, \$25;
 - (15) Special handling fee for review of corporation documents, excluding articles of conversion or merger, [~~\$50;~~] \$25;
 - (16) Special handling fee for review of articles of conversion or merger, [~~\$150;~~] \$75;
 - (17) Special handling fee for certificates issued by the department, [~~\$25~~] \$10 per certificate; and
 - (18) Special handling fee for certification of documents, [~~\$25-~~] \$10.”
2. By amending subsection (d) to read:
- “(d) The department director shall charge and collect:
- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, [~~\$20~~] \$10 for the certificate and affixing the seal thereto; and
 - (2) At the time of any service of process on the department director as agent for service of process of a corporation, [~~\$25,~~] \$10, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.”

SECTION 4. Section 414D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$50;
- (2) Articles of amendment, [~~\$20;~~] \$10;
- (3) Restated articles of incorporation, [~~\$20;~~] \$10;
- (4) Articles of merger, [~~\$100;~~] \$50;
- (5) Articles of conversion, [~~\$200;~~] \$50;
- (6) Articles of dissolution, [~~\$20;~~] \$10;
- (7) Annual report of nonprofit domestic or foreign corporation, \$5;
- (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, [~~\$20;~~] \$10;
- (9) Application for a certificate of authority, \$50;
- (10) Application for a certificate of withdrawal, [~~\$20;~~] \$10;
- (11) Reservation of corporate name, [~~\$20;~~] \$10;
- (12) Transfer of reservation of corporate name, [~~\$20;~~] \$10;
- (13) Good standing certificate, \$25;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or conversion, [~~\$50;~~] \$25;
- (15) Special handling fee for review of articles of conversion or merger, [~~\$150;~~] \$75;
- (16) Special handling fee for certificates issued by the department, [~~\$25~~] \$10 per certificate;
- (17) Special handling fee for certification of documents, [~~\$25;~~] \$10; and
- (18) Agent’s statement of change of registered office, [~~\$20~~] \$10 for each affected domestic corporation or foreign corporation; provided that if more than two hundred simultaneous filings are made, the fee shall be

reduced to \$1 for each affected domestic corporation or foreign corporation.”

SECTION 5. Section 414D-18, Hawaii Revised Statutes, is amended to read as follows:

“~~[(1)]~~**\$414D-18** **Miscellaneous charges.** The department director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, ~~[\$20;]~~ \$10; and
- (2) At the time of any service of process on the department director as agent for service of process of a corporation, ~~[\$25;]~~ \$10, which amount may be recovered as taxable costs by the party to the action causing the service to be made if that party prevails in the action.”

SECTION 6. Section 425-12, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, ~~[\$25;]~~ \$10;
- (3) Partnership dissolution statement, ~~[\$25;]~~ \$10;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, ~~[\$25;]~~ \$10;
- (6) Application for certificate of withdrawal, ~~[\$10;]~~ \$5;
- (7) Statement of correction, ~~[\$25;]~~ \$10;
- (8) Reservation of name, ~~[\$20;]~~ \$10;
- (9) Transfer of reservation of name, ~~[\$20;]~~ \$10;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$25;
- (12) Articles of conversion~~[-, \$200;]~~ or merger, \$100;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, ~~[\$25;]~~ \$10;
- (14) Special handling fee for review of any general partnership document, ~~[\$50;]~~ \$25;
- (15) Special handling fee for certificates issued by the director, ~~[\$25]~~ \$10 per certificate;
- (16) Special handling fee for certification of documents, ~~[\$25;]~~ \$10;
- (17) Special handling fee for review of articles of conversion~~[-, \$150;]~~ or merger, \$75; and
- (18) Agent’s statement of change of address, ~~[\$20]~~ \$10 for each affected foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign general partnership.

(b) The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a general partnership, ~~[\$20]~~ \$10 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a general partnership, ~~[\$25;]~~ \$10, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.”

SECTION 7. Section 425-168, Hawaii Revised Statutes, is amended by amending subsections (a) through (c) to read as follows:

“(a) The director shall collect the following fees for the following limited liability partnership documents:

- (1) Annual report, \$25;
- (2) Statement of qualification, \$50;
- (3) Statement of foreign qualification, \$100;
- (4) Statement of correction, amendment, restatement, or amendment and restatement, [~~\$50;~~] \$25;
- (5) Certificate of good standing, \$25;
- (6) Articles of conversion[~~;~~ ~~\$200;~~] or merger, \$100;
- (7) For any other certificate, statement, or document, [~~\$50;~~] \$25;
- (8) Certification of domestic or foreign partnership, [~~\$20;~~] \$10; and
- (9) For each agent’s statement of change of registered office, [~~\$20]~~ \$10 for each affected domestic or foreign limited liability partnership; provided that if an agent files more than two hundred statements of change of registered office at the same time, the fee shall be reduced to \$1 for each affected domestic or foreign limited liability partnership.

(b) The following special handling fees shall be assessed by the director for expeditious handling and review of the following documents:

- (1) Statement of qualification, [~~\$50;~~] \$25;
- (2) Statement of correction, amendment, restatement, or amendment and restatement, [~~\$50;~~] \$25;
- (3) Annual report, [~~\$50;~~] \$25;
- (4) Certification of domestic or foreign limited liability partnership, [~~\$25;~~] \$10;
- (5) Certificate of good standing for domestic or foreign limited liability partnership, [~~\$25;~~] \$10;
- (6) Articles of conversion or merger for domestic or foreign limited liability partnership, [~~\$150;~~] \$75;
- (7) Statement of foreign qualification, [~~\$50;~~] \$25;
- (8) Statement of correction, amendment, restatement, or amendment and restatement of foreign limited liability partnership, [~~\$50;~~] \$25;
- (9) Annual report, [~~\$50;~~] \$25; and
- (10) For any other certificate or document authorized by this subpart, [~~\$50;~~] \$25.

(c) The director shall charge and collect:

- (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited liability partnership, [~~\$20]~~ \$10 for the certificate and affixing the seal thereto; and
- (2) At the time of any service of process on the director as agent for service of process of a limited liability partnership, [~~\$25;~~] \$10, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.”

SECTION 8. Section 425E-211, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$50;
- (2) Any certificate of amendment, restatement, or correction, [~~\$20;~~] \$10;
- (3) Certificate of cancellation, [~~\$20;~~] \$10;
- (4) Annual statement for domestic or foreign limited partnership, \$10;
- (5) Any other certificate or document of domestic or foreign limited partnership, [~~\$20;~~] \$10;

- (6) Application for registration as a foreign limited partnership, \$100;
- (7) Any certificate of amendment or agent change for foreign limited partnership, [~~\$20;~~] \$10;
- (8) Application for certificate of withdrawal of foreign limited partnership, [~~\$20;~~] \$10;
- (9) Reservation of name, [~~\$20;~~] \$10;
- (10) Transfer of reservation of name, [~~\$20;~~] \$10;
- (11) Good standing certificate, \$25;
- (12) Articles of conversion[, ~~\$200;~~] or merger, \$100;
- (13) Special handling fee for review of articles of conversion[, ~~\$150;~~] or merger, \$75;
- (14) Special handling fee for review of any limited partnership document, [~~\$50;~~] \$25;
- (15) Special handling fee for certificates issued by the director, [~~\$25~~] \$10 per certificate;
- (16) Special handling fee for certification of documents, [~~\$25;~~] \$10; and
- (17) Agent's statement of change of address, [~~\$20~~] \$10 for each affected foreign limited partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign limited partnership.
- (b) The director shall charge and collect:
 - (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited partnership, [~~\$20~~] \$10 for the certificate and affixing the seal thereto; and
 - (2) At the time of any service of process on the director as agent for service of process of a limited partnership, [~~\$25;~~] \$10, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action."

SECTION 9. Section 428-1301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

- (1) Articles of organization, \$100;
- (2) Articles of amendment, [~~\$50;~~] \$25;
- (3) Restated articles of organization, [~~\$50;~~] \$25;
- (4) Articles of merger or conversion, [~~\$200;~~] \$100;
- (5) Statement of dissociation, [~~\$50;~~] \$25;
- (6) Articles of termination, [~~\$50;~~] \$25;
- (7) Application for reinstatement for administratively terminated limited liability company, [~~\$50;~~] \$25;
- (8) Annual report, \$25;
- (9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, [~~\$50;~~] \$25;
- (10) Agent's statement of change of address, [~~\$50~~] \$25 for each affected domestic limited liability company or foreign limited liability company; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic limited liability company or foreign limited liability company;
- (11) Any other statement or document of a domestic or foreign limited liability company, [~~\$50;~~] \$25;
- (12) Application for certificate of authority for foreign limited liability company, \$100;

- (13) Application for cancellation of authority of foreign limited liability company, [~~\$50;~~] \$25;
- (14) Reservation of name, [~~\$25;~~] \$10;
- (15) Good standing certificate, \$25;
- (16) Any other record not otherwise covered in this part, [~~\$50;~~] \$25;
- (17) Certified copy of any record relating to a limited liability company or foreign limited liability company, [~~\$20~~] \$10 for the certificate and affixing the seal thereto;
- (18) Special handling fee for review of any record other than articles of merger or conversion, [~~\$50;~~] \$25;
- (19) Special handling fee for review of articles of merger or conversion, [~~\$150;~~] \$75;
- (20) Special handling fee for certificate issued by the director not otherwise covered by this section, [~~\$25~~] \$10 per certificate;
- (21) Special handling fee for certification of record, [~~\$25;~~] \$10; and
- (22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, [~~\$25;~~] \$10, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action."

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2004.

(Approved June 15, 2004.)

ACT 117

S.B. NO. 2906

A Bill for an Act Relating to Certificates of Good Standing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 414-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$100;
- (2) Articles of amendment, \$50;
- (3) Restated articles of incorporation, \$50;
- (4) Articles of conversion or merger, \$200;
- (5) Articles of merger (subsidiary corporation), \$100;
- (6) Articles of dissolution, \$50;
- (7) Annual report of domestic and foreign corporations organized for profit, \$25;
- (8) Agent's statement of change of registered office, \$50 for each affected domestic corporation or foreign corporation, except if simultaneous filings are made the fee is reduced to \$1 for each affected domestic corporation or foreign corporation in excess of two hundred;
- (9) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, \$50;

- (10) Application for a certificate of authority, \$100;
- (11) Application for a certificate of withdrawal, \$50;
- (12) Reservation of corporate name, \$20;
- (13) Transfer of reservation of corporate name, \$20;
- (14) Good standing certificate, [~~\$25;~~] \$5;
- (15) Special handling fee for review of corporation documents, excluding articles of conversion or merger, \$50;
- (16) Special handling fee for review of articles of conversion or merger, \$150;
- (17) Special handling fee for certificates issued by the department, \$25 per certificate; and
- (18) Special handling fee for certification of documents, \$25."

SECTION 2. Section 414D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the department director upon the filing of corporate documents:

- (1) Articles of incorporation, \$50;
- (2) Articles of amendment, \$20;
- (3) Restated articles of incorporation, \$20;
- (4) Articles of merger, \$100;
- (5) Articles of conversion, \$200;
- (6) Articles of dissolution, \$20;
- (7) Annual report of nonprofit domestic or foreign corporation, \$5;
- (8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, \$20;
- (9) Application for a certificate of authority, \$50;
- (10) Application for a certificate of withdrawal, \$20;
- (11) Reservation of corporate name, \$20;
- (12) Transfer of reservation of corporate name, \$20;
- (13) Good standing certificate, [~~\$25;~~] \$5;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or conversion, \$50;
- (15) Special handling fee for review of articles of conversion or merger, \$150;
- (16) Special handling fee for certificates issued by the department, \$25 per certificate;
- (17) Special handling fee for certification of documents, \$25; and
- (18) Agent's statement of change of registered office, \$20 for each affected domestic corporation or foreign corporation; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic corporation or foreign corporation."

SECTION 3. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$25;
- (3) Partnership dissolution statement, \$25;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$25;
- (6) Application for certificate of withdrawal, \$10;

- (7) Statement of correction, \$25;
- (8) Reservation of name, \$20;
- (9) Transfer of reservation of name, \$20;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, [~~\$25;~~] \$5;
- (12) Articles of conversion, \$200;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$25;
- (14) Special handling fee for review of any general partnership document, \$50;
- (15) Special handling fee for certificates issued by the director, \$25 per certificate;
- (16) Special handling fee for certification of documents, \$25;
- (17) Special handling fee for review of articles of conversion, \$150; and
- (18) Agent's statement of change of address, \$20 for each affected foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign general partnership."

SECTION 4. Section 425-168, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director shall collect the following fees for the following limited liability partnership documents:

- (1) Annual report, \$25;
- (2) Statement of qualification, \$50;
- (3) Statement of foreign qualification, \$100;
- (4) Statement of correction, amendment, restatement, or amendment and restatement, \$50;
- (5) Certificate of good standing, [~~\$25;~~] \$5;
- (6) Articles of conversion, \$200;
- (7) For any other certificate, statement, or document, \$50;
- (8) Certification of domestic or foreign partnership, \$20; and
- (9) For each agent's statement of change of registered office, \$20 for each affected domestic or foreign limited liability partnership; provided that if an agent files more than two hundred statements of change of registered office at the same time, the fee shall be reduced to \$1 for each affected domestic or foreign limited liability partnership."

SECTION 5. Section 425E-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$50;
- (2) Any certificate of amendment, restatement, or correction, \$20;
- (3) Certificate of cancellation, \$20;
- (4) Annual statement for domestic or foreign limited partnership, \$10;
- (5) Any other certificate or document of domestic or foreign limited partnership, \$20;
- (6) Application for registration as a foreign limited partnership, \$100;
- (7) Any certificate of amendment or agent change for foreign limited partnership, \$20;
- (8) Application for certificate of withdrawal of foreign limited partnership, \$20;
- (9) Reservation of name, \$20;

- (10) Transfer of reservation of name, \$20;
- (11) Good standing certificate, [~~\$25;~~] \$5;
- (12) Articles of conversion, \$200;
- (13) Special handling fee for review of articles of conversion, \$150;
- (14) Special handling fee for review of any limited partnership document, \$50;
- (15) Special handling fee for certificates issued by the director, \$25 per certificate;
- (16) Special handling fee for certification of documents, \$25; and
- (17) Agent's statement of change of address, \$20 for each affected foreign limited partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign limited partnership."

SECTION 6. Section 428-1301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

- (1) Articles of organization, \$100;
- (2) Articles of amendment, \$50;
- (3) Restated articles of organization, \$50;
- (4) Articles of merger or conversion, \$200;
- (5) Statement of dissociation, \$50;
- (6) Articles of termination, \$50;
- (7) Application for reinstatement for administratively terminated limited liability company, \$50;
- (8) Annual report, \$25;
- (9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, \$50;
- (10) Agent's statement of change of address, \$50 for each affected domestic limited liability company or foreign limited liability company; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic limited liability company or foreign limited liability company;
- (11) Any other statement or document of a domestic or foreign limited liability company, \$50;
- (12) Application for certificate of authority for foreign limited liability company, \$100;
- (13) Application for cancellation of authority of foreign limited liability company, \$50;
- (14) Reservation of name, \$25;
- (15) Good standing certificate, [~~\$25;~~] \$5;
- (16) Any other record not otherwise covered in this part, \$50;
- (17) Certified copy of any record relating to a limited liability company or foreign limited liability company, \$20 for the certificate and affixing the seal thereto;
- (18) Special handling fee for review of any record other than articles of merger or conversion, \$50;
- (19) Special handling fee for review of articles of merger or conversion, \$150;
- (20) Special handling fee for certificate issued by the director not otherwise covered by this section, \$25 per certificate;
- (21) Special handling fee for certification of record, \$25; and

- (22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.”

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2004.

(Approved June 15, 2004.)

ACT 118

H.B. NO. 2408

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, article 10A, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

“§431:10A- Bona fide trade associations. (a) At the option of a bona fide trade association, or its designated agent, an insurer that sells health insurance to the bona fide trade association shall treat the bona fide trade association and its members as a group for the purpose of issuing group disability insurance; provided that:

- (1) The bona fide trade association shall have been formed for purposes other than obtaining insurance;
- (2) The insurer shall be prohibited from restricting, in any manner, the number or types of health plans issued by another insurance entity that the bona fide trade association may offer to its members, including but not limited to such restrictions as clauses that reduce competition between insurers or clauses that require a bona fide trade association to allow an insurer to match the price or terms offered by another insurer; and
- (3) Each member of the bona fide trade association shall not be required to be insured under the group policy;

and provided further that this section shall be inapplicable if less than two persons from the bona fide trade association seek to be insured under the group policy.

(b) As used in this section:

“Bona fide trade association” means an association of persons organized to promote common interests and comprised of persons engaged in a business, trade, or profession that:

- (1) Has been actively in existence for five years;
- (2) Has been formed and maintained in good faith for purposes other than obtaining insurance;
- (3) Does not condition membership in the association on any health status related factor pertaining to an individual (including an employee of an employer or a dependent of an employee);
- (4) Makes health insurance coverage offered through the association available to all members regardless of any health status related factor

- pertaining to such members (or individuals eligible for coverage through a member);
- (5) Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and
- (6) Meets such additional requirements as may be imposed under state law.”

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding to article 1 a new section to be appropriately designated and to read as follows:

“§432:1- Bona fide trade associations. (a) At the option of a bona fide trade association, or its designated agent, a mutual benefit society that operates a health plan and sells health insurance to the bona fide trade association shall treat the bona fide trade association and its members as a group for the purpose of issuing a group hospital or medical service plan, policy, contract, or agreement; provided that:

- (1) The bona fide trade association shall have been formed for purposes other than obtaining insurance;
- (2) The mutual benefit society shall be prohibited from restricting, in any manner, the number or types of health plans issued by another insurance entity that the bona fide trade association may offer to its members, including but not limited to such restrictions as clauses that reduce competition between insurers or clauses that require a bona fide trade association to allow an insurer to match the price or terms offered by another insurer; and
- (3) Each member of the bona fide trade association shall not be required to be insured under the group policy;

and provided further that this section shall be inapplicable if less than two persons from the bona fide trade association seek to be insured under the group policy.

(b) As used in this section:

“Bona fide trade association” means an association of persons organized to promote common interests and comprised of persons engaged in a business, trade, or profession that:

- (1) Has been actively in existence for five years;
- (2) Has been formed and maintained in good faith for purposes other than obtaining insurance;
- (3) Does not condition membership in the association on any health status related factor pertaining to an individual (including an employee of an employer or a dependent of an employee);
- (4) Makes health insurance coverage offered through the association available to all members regardless of any health status related factor pertaining to such members (or individuals eligible for coverage through a member);
- (5) Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and
- (6) Meets such additional requirements as may be imposed under state law.”

SECTION 3. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§432D- Bona fide trade associations. (a) At the option of a bona fide trade association, or its designated agent, a health maintenance organization that

sells health insurance to the bona fide trade association shall treat the bona fide trade association and its members as a group for the purpose of issuing a group contract; provided that:

- (1) The bona fide trade association shall have been formed for purposes other than obtaining insurance;
 - (2) The health maintenance organization shall be prohibited from restricting, in any manner, the number or types of health plans issued by another insurance entity that the bona fide trade association may offer to its members, including but not limited to such restrictions as clauses that reduce competition between insurers or clauses that require a bona fide trade association to allow an insurer to match the price or terms offered by another insurer; and
 - (3) Each member of the bona fide trade association shall not be required to be insured under the group policy;
- and provided further that this section shall be inapplicable if less than two persons from the bona fide trade association seek to be insured under the group policy.

(b) As used in this section:
 “Bona fide trade association” means an association of persons organized to promote common interests and comprised of persons engaged in a business, trade, or profession that:

- (1) Has been actively in existence for five years;
- (2) Has been formed and maintained in good faith for purposes other than obtaining insurance;
- (3) Does not condition membership in the association on any health status related factor pertaining to an individual (including an employee of an employer or a dependent of an employee);
- (4) Makes health insurance coverage offered through the association available to all members regardless of any health status related factor pertaining to such members (or individuals eligible for coverage through a member);
- (5) Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and
- (6) Meets such additional requirements as may be imposed under state law.”

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval and shall be repealed on December 31, 2006.

(Approved June 15, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 119

S.B. NO. 2358

A Bill for an Act Relating to Construction Claims.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need for a method of resolving construction disputes that reduces the need for litigation while still protect-

ing claimants' rights. The legislature further finds that an effective alternative dispute resolution mechanism for construction defects should require the claimant to serve a notice of claim on the construction professional responsible for the defect and allow the construction professional an opportunity to resolve the dispute without litigation.

The purpose of this Act, therefore, is to enact a notice and opportunity to repair law that requires notice of and an opportunity to repair a construction defect as a condition precedent to legal action between the claimant and contractor, and a notice of claim to any liability insurer.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER CONTRACTOR REPAIR ACT

§ -1 **Definitions.** The following terms, whenever used in this chapter, shall have the following meanings, unless a different meaning clearly appears in context:

“Action” means any civil proceeding, including but not limited to arbitration, in which damages or other relief may be awarded or enforced with respect to an alleged construction defect.

“Association” means a nonprofit, incorporated, or unincorporated organization upon which responsibilities are imposed and authority is granted in the organization's declaration or bylaws.

“Claim” means any notice of claim by a claimant to a contractor of a construction defect.

“Claimant” means any person, entity, partnership, corporation, or association asserting a claim concerning an alleged construction defect.

“Common area” means real property within a planned community that is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the association's declaration or bylaws.

“Construction defect” means a deficiency in, or arising out of, the design, specifications, surveying, planning, construction, supervision, or observation of construction of a dwelling or premises.

“Contractor” means any person, firm, partnership, corporation, association, or other organization that is engaged in the business of designing, manufacturing, supplying products, developing, constructing, or selling a dwelling.

“Dwelling” means a single-family house, duplex, or multi-family unit designed for residential use, including common areas and improvements that are owned or maintained by an individual, association, or other entity.

“Mediation” means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

“Planned community” means a common interest community, including condominiums and cooperative housing corporations, and excluding time share plans.

“Premises” means a dwelling, including common areas and improvements that are owned or maintained by any person, firm, partnership, corporation, association, or other organization. “Premises” includes the systems, other component improvements, other structures, or recreational facilities appurtenant to, but not necessarily a part of, the dwelling or facility.

“Service” means personal service or delivery by certified mail, return receipt requested, to the last known address of the addressee.

§ -2 Applicability; administration. All claimants filing an action alleging construction defects shall comply with this chapter; provided that this chapter shall not apply to any actions that include claims for personal injury or death.

§ -3 Notice of claim of construction defect. (a) A claimant, no later than ninety days before filing an action against a contractor, shall serve the contractor with a written notice of claim. The notice of claim shall describe the claim in detail and include the results of any testing done. The notice of claim shall not constitute a claim under any applicable insurance policy and shall not give rise to a duty of any insurer to provide a defense under any applicable insurance policy unless and until the process set forth in section -5 is completed. Nothing in this chapter shall in any way interfere with or alter the rights and obligations of the parties under any liability policy.

(b) A contractor served with a written notice of claim shall serve any other appropriate subcontractor with notice of the claim. The contractor’s notice shall include the claimant’s written notice of claim.

(c) After serving the notice of claim, a claimant shall give to the contractor reasonable prior notice and an opportunity to observe if any testing is done.

§ -4 Rejection of claim; opportunity to repair construction defect. (a) The contractor rejects a claimant’s claim of construction defects by:

- (1) Serving the claimant with a written rejection of the claim; or
- (2) Failing to respond pursuant to subsection (b)(1) or (b)(2), to the notice of claim within thirty days after service.

(b) The contractor, within thirty days after service of the notice of claim, shall serve the claimant and any other contractor that has received the notice of claim with a written response to the alleged construction defect that:

- (1) Offers to settle without inspecting the construction defect by:
 - (A) Monetary payment;
 - (B) Making repairs; or
 - (C) Both subparagraphs (A) and (B); or
- (2) Proposes to inspect the premises of the alleged construction defect that is the subject of the claim.

(c) Within thirty days following any proposal for inspection under subsection (b)(2), the claimant shall provide access to:

- (1) Inspect the premises;
- (2) Document any alleged construction defects; and
- (3) Perform any testing required to evaluate the nature, extent, and cause of the asserted construction defect, and the nature and extent of any repair or replacement that may be necessary to remedy the asserted construction defect;

provided that if the claimant is an association of apartment owners, the claimant shall have forty-five days to provide such access. If access to an individual condominium unit is necessary, and the association is unable to obtain such access, then the association shall have a reasonable time to provide access. If destructive testing is required, the contractor shall give advance notice of tests and return the premises to its pre-testing condition. If inspection or testing reveals a condition that requires additional testing to fully and completely evaluate the nature, cause, and extent of the construction defect, the contractor shall provide notice to the claimant of the need for additional testing. Claimant shall provide additional access to the premises. If a claim is asserted on behalf of owners of multiple dwellings, or

multiple owners of units within a multi-family complex, the contractor shall be entitled to inspect each of the dwellings or units.

(d) Within fourteen days following the inspection and testing, the contractor shall serve on the claimant a written:

- (1) Offer to fully or partially remedy the construction defect at no cost to the claimant. Such offer shall include a description of construction necessary to remedy the construction defect and a timetable for the completion of the additional construction;
- (2) Offer to settle the claim by monetary payment;
- (3) Offer for a combination of repairs and monetary payment; or
- (4) Statement that the contractor will not proceed further to remedy the construction defect.

Any offer of settlement under this section shall reference this section, and shall state that a claimant's failure to respond with a written notice of acceptance or rejection within thirty or forty-five days, whichever applies pursuant to section -5(a), shall mean that the offer is rejected. Failure to serve a written offer or statement under this section shall be deemed a statement that the contractor will not proceed further.

§ **-5 Written notice of acceptance; access to premises.** (a) The claimant, within thirty days after receipt of a contractor's settlement offer, may accept any offer by serving the contractor with a written notice of acceptance; provided that an association shall have forty-five days to respond. If no written notice of acceptance is served, the settlement offer shall be deemed.

(b) If a claimant accepts a contractor's offer to repair, the claimant shall unfettered access to perform and complete the construction within the timetable stated in the settlement offer.

§ **-6 Offer of settlement.** Any time after the service of the notice of claim, any party may serve an offer of settlement. If the offer is accepted, the parties shall be deemed to have resolved the claim in whole or in part pursuant to the offer. An offer not accepted within ten days after service shall be deemed withdrawn and evidence thereof is not admissible except to determine costs. If the judgment or award obtained in a subsequent proceeding is not more favorable than the offer, the offeree shall pay the costs incurred by the offeror after the making of the offer. The fact that an offer is made and not accepted does not preclude a subsequent offer.

§ **-7 Mediation.** If the parties are unable to resolve the claim pursuant to section -5 or -6, all parties shall attempt to resolve the dispute through mediation, even if mediation is not otherwise ordered or mandated by contract or by law.

§ **-8 Statute of limitations on actions exception.** If an applicable statute of limitation or repose would preclude an action after the notice of claim has been served but before the dispute is resolved under this chapter, the claimant may file an action against the contractor but the action shall be immediately stayed pending the contractor's opportunity to repair under section -4, or submission of the dispute to mediation under section -7. This section shall not be construed to revive a statutory period of limitations on actions that have expired prior to the date on which a claimant's written notice of claim is served. After the sending of the initial notice of claim, a claimant and a contractor, by written mutual agreement, may alter the procedure for the notice of claim under this section.

§ **-9 Additional construction defects.** A construction defect discovered after the notice of claim is served may not be alleged in an action until the claimant has given the contractor:

- (1) A written notice of claim regarding the alleged defect under section -3; and
- (2) An opportunity to repair the construction defect or reject the notice of claim under section -4.

§ **-10 Release.** If the parties resolve the claim in whole or in part, the claimant shall be barred from bringing an action for the resolved claims.

§ **-11 Contract of sale; provisions.** (a) Upon entering into a contract for sale of a new structure or the construction or substantial remodeling of a premises, the seller of the new structure shall provide to the purchaser of the new structure, and the contractor of the construction or substantial remodeling of the premises shall provide to the owner of the premises, notice of the contractor's right to resolve alleged construction defects before a claimant may commence litigation against the contractor. The notice shall be conspicuous and included as part of the contract.

(b) The notice required by subsection (a) shall explicitly reference this chapter, and shall be in substantially the following form:

“CHAPTER OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED YOUR HOME OR FACILITY. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.”

§ **-12 Other actions.** This chapter shall not interfere with a contractor's right to seek contribution, indemnity, or recovery against a subcontractor, supplier, or design professional for any claim made against a contractor by a claimant.

§ **-13 Dismissal without prejudice.** The court or arbitrator shall dismiss, without prejudice, any action failing to meet the requirements of this chapter, unless:

- (1) The failure to meet the requirements is the direct result of the wrongful conduct of another party;
- (2) Circumstances beyond the control of the party prevented compliance; or
- (3) An applicable statute of limitations on actions would prevent the refile of an action, in which case the action shall be immediately stayed to provide the claimant with an opportunity to comply with this chapter, but for no longer than six months;

provided that the exceptions provided by this section to any specific requirement of this chapter shall not excuse a party from substantially complying with the remainder of the chapter.”

ACT 120

SECTION 3. Section 444-25.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All licensed contractors performing home construction or improvements shall provide a written contract to the homeowner. The written contract shall:

- (1) Contain the information provided in subsection (a) and any other relevant information that the board may require by rule;
- (2) Contain notice of the contractor’s right to resolve alleged construction defects prior to commencing any litigation in accordance with section -11;

[(2)] (3) Be signed by the contractor and the homeowner; and

[(3)] (4) Be executed prior to the performance of any home construction or improvement.”

SECTION 4. Chapter 672, Hawaii Revised Statutes, is repealed.

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2004.

(Approved June 15, 2004.)

ACT 120

S.B. NO. 2882

A Bill for an Act Relating to Alien Insurers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. As a result of various advancements in science and technology, businesses and industries have expanded their boundaries so that Hawaii is now part of a global economy. The State of Hawaii has been aggressive in keeping up with these global trends by pursuing initiatives to establish itself as a preeminent center for business in the Pacific Rim.

One such successful initiative has been the establishment of the captive insurance branch within the insurance division of the department of commerce and consumer affairs. Through the efforts of the captive insurance branch, the State of Hawaii has become the second most successful domicile for captive insurance companies in the United States and ranked in the top ten of captive insurance company domiciles worldwide. Because of Hawaii’s track record as a leader in the area of captive insurance, insurance companies from nations in the Pacific Rim continue to express interest in conducting business in Hawaii.

Enabling alien insurance companies to use the State of Hawaii as a state of entry to transact insurance in the United States would help to maintain Hawaii’s status as a preeminent center of business in the Pacific Rim, and strengthen and expand relationships established by the captive insurance branch. Moreover, establishing Hawaii as a port of entry for alien insurers would boost Hawaii’s economy through the generation of revenue and creation of employment opportunities.

The purpose of this Act is to establish Hawaii as a state of entry for alien insurers.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE
STATE OF ENTRY FOR ALIEN INSURERS**

§431: -101 Definitions. As used in this article, unless the context requires otherwise:

“Alien insurer” has the same meaning as set forth in section 431:3-101.

“Trusteed assets” mean the assets in a trust account required by section 431: -104.

“Trusteed surplus” means the aggregate value of the insurer’s general state deposits and trusteed assets deposited with a trustee in compliance with section 431: -105, plus accrued investment income thereon where such interest is collected by the states for trustees, less the aggregate net amount of all of the insurer’s reserves and other liabilities in the United States as determined in accordance with section 431: -106.

“United States branch” means the business unit through which business is transacted within the United States by an alien insurer and the assets and liabilities of the insurer within the United States pertaining to such business.

§431: -102 Scope. This article applies to a United States branch using this State as a state of entry to transact insurance in the United States. The United States branch shall be subject to all state laws applicable to an insurer domiciled in this State, unless otherwise provided.

§431: -103 Authorization of entry. (a) An alien insurer may use this State as a state of entry to transact insurance in the United States through a United States branch by:

- (1) Qualifying as an insurer licensed to do business in this State; and
- (2) Establishing a trust account, pursuant to a trust agreement approved by the commissioner with a United States financial institution approved by the commissioner, in an amount at least equal to the minimum capital and surplus or authorized control level risk-based capital, whichever is greater, required to be maintained by a domestic insurer licensed to do the same kind of insurance.

(b) Before authorizing the entry of a United States branch of any alien insurer through this State, the commissioner shall in addition to the requirements of section 431: -105 and any other requirement of this chapter, require the alien insurer to:

- (1) Comply with the requirements of section 431:3-212;
- (2) Submit an English language translation, as necessary, of any of the documents required in paragraph (1); and
- (3) Submit to an examination of the insurer’s affairs at its principal office within the United States.

§431: -104 Maintenance of trust account. The trusteed assets, or the assets of the trust account of an alien insurer, as required by section 431: -103, shall at all times be in an amount equal to the United States branch’s reserves and other liabilities plus the minimum capital and surplus or authorized control level risk-based capital, whichever is greater, required to be maintained by a domestic insurer licensed to do the same kind of insurance.

§431: -105 Requirements for trust agreement. (a) The terms of the trust agreement required by section 431: -103 shall be set forth in a deed of trust. The

deed of trust and all subsequent amendments shall be authenticated in a form and manner as the commissioner may prescribe and shall not be effective unless approved by the commissioner upon a finding that:

- (1) A deed of trust or its amendments are sufficient in form and in conformity with law;
- (2) The trustee or trustees are eligible as such; and
- (3) The deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(b) If at any time after reasonable notice and hearing, the commissioner finds that the requisites for the approval no longer exist, the commissioner may withdraw approval.

(c) The commissioner may approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are not prejudicial to the interests of the people of this State or policyholders and creditors in the United States, of the United States branch.

(d) The deed of trust shall contain provisions that:

- (1) Vest legal title to trust assets in the trustee or trustees, and their lawfully appointed successors;
- (2) Require that all assets deposited in the trust shall be continuously kept within Hawaii;
- (3) Provide for substitution of a new trustee or trustees in case of a vacancy by death, resignation, or otherwise, subject to the approval of the commissioner;
- (4) Require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of such fund;
- (5) Require that the trust assets shall consist of cash or investments, or both, as permitted by article 6 for investment of the funds of domestic insurers and accrued interest thereon if collectable by the trustee;
- (6) Require that the trust shall be for the exclusive benefit, security, and protection of the policyholders, or policyholders and creditors in the United States, of the United States branch;
- (7) Require that the trust shall be maintained as long as there is any outstanding liability of the alien insurer arising out of its insurance transactions in the United States; and
- (8) Provide, in substance, that no withdrawals of assets, other than income as specified in subsection (e) shall be made or permitted by the trustee or trustees without the approval of the commissioner except to:
 - (A) Make deposits required by law in any state for the security or benefit of all policyholders, or policyholders and creditors in the United States, of the United States branch;
 - (B) Substitute other assets permitted by law and at least equal in value and quality to those withdrawn, upon the specific written direction of the United States branch manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or
 - (C) Transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(e) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States branch manager of the United States branch upon request; provided that the total trust assets shall not be less than the amount required to be maintained pursuant to section 431: -104.

(f) Upon withdrawal of trustee assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the deed of trust requires similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner; provided that the total trustee assets shall not be less than the amount required to be maintained pursuant to section 431: -104. In all such cases, the United States branch shall notify the commissioner in writing of the nature and extent of the withdrawal.

(g) The commissioner may:

- (1) Make examinations of the trustee assets of any authorized United States branch at the insurer's expense; and
- (2) Require the trustee or trustees to file a statement, in such form as the commissioner may prescribe, certifying the assets of the trust fund and the amounts thereof.

(h) Refusal or neglect of any trustee to comply with this section shall be grounds for the revocation of the insurer's license or the liquidation of its United States branch.

§431: -106 Reporting requirements for United States branches of alien insurers. (a) In addition to other requirements of the insurance code, every authorized United States branch shall complete and file the report required of a domestic insurer in article 3, including:

- (1) Annual and quarterly statements of the business transacted within the United States and the assets held by or for it within the United States for the protection of policyholders and creditors within the United States, and of the liabilities incurred against such assets. The forms shall not contain any statement in regard to its assets and business elsewhere. The statements shall be in the same format required of an insurer domiciled in Hawaii and licensed to write the same kinds of insurance; and
- (2) A statement of trustee surplus, in such form as the commissioner may prescribe, as of the end of the same period covered by the statement filed pursuant to paragraph (1). In determining the net amount of the United States branch's liabilities in the United States to be reported in the statement of trustee surplus, the United States branch shall make adjustments to total liabilities reported on the accompanying annual or quarterly statement as follows:
 - (A) Add back liabilities used to offset admitted assets reported in the accompanying quarterly or annual statement, and;
 - (B) Deduct:
 - (i) Unearned premiums on agent's balances or uncollected premiums not more than ninety days past due not exceeding unearned premium reserves carried thereon;
 - (ii) Reinsurance on losses with authorized insurers, less unpaid reinsurance premiums;
 - (iii) Reinsurance recoverables on paid losses from unauthorized insurers that are included as assets in the annual or quarterly statement; but only to the extent a liability for such unauthorized recoverables is included in the liabilities report in the trustee surplus statement;
 - (iv) Special state deposits held for the exclusive benefit of policyholders, or policyholders and creditors, of any particular state not exceeding net liabilities reported for that state;
 - (v) Secured accrued retrospective premiums;

- (vi) If a life insurer, the amount of its policy loans to policyholders within the United States, not exceeding the amount of legal reserve required on each such policy;
 - (vii) If a life insurer, the net amount of uncollected and deferred premiums; and
 - (viii) Any other non-trusted asset that the commissioner determines secures liabilities in a substantially similar manner; and
- (C) Provide any additional information that the commissioner may require relating to the total business or assets, or any portion thereof, of the alien insurer.

(b) The annual statement and trusted surplus statement shall be signed and verified by the United States branch manager, attorney-in-fact, or a duly empowered assistant United States branch manager, of the United States branch. The items of securities and other property held under trust deeds shall be certified in the trusted surplus statement by the United States trustee or trustees.

(c) Every report on examination of a United States branch shall include a trusted surplus statement as of the date of examination in addition to the general statement of the financial condition of the United States branch.

§431: -107 Additional requirements for United States branch license.

(a) Before issuing any new or renewal license to any United States branch, the commissioner may require satisfactory proof, either in the alien insurer's charter or by an agreement evidenced by a duly certified resolution of its board of directors, or otherwise as the commissioner may require, that the insurer will not engage in any insurance business in contravention of this section or not authorized by its charter.

(b) The commissioner shall issue a renewal license to any United States branch if satisfied, by such proof as required, that the insurer is not delinquent with respect to any requirement imposed by this chapter and that its continuance in business in this State will not be hazardous or prejudicial to the best interests of the people of this State.

(c) No United States branch shall be licensed to do any kind of insurance business in this State, or any combination of kinds of insurance business, that are not permitted to be done by domestic insurers licensed under this chapter. No United States branch shall be authorized to do an insurance business in this State if it does anywhere within the United States any kind of business other than an insurance business and the business necessarily or properly incidental to the kind or kinds of insurance business that it is authorized to do in this State.

(d) Except as otherwise specifically provided, no United States branch, entering through this State or another state, shall be or continue to be authorized to do an insurance business in this State if it fails to comply substantially with any requirement or limitation of this chapter, applicable to similar domestic insurers hereafter organized, which in the judgment of the commissioner is reasonably necessary to protect the interest of the policyholders.

(e) No United States branch that, outside of this State, does any kind or combination of kinds of insurance business not permitted to be done in this State by similar domestic insurers hereafter organized, shall be or continue to be authorized to do an insurance business in this State, unless in the judgment of the commissioner the doing of that kind or combination of kinds of insurance business will not be prejudicial to the best interests of the people of this State.

(f) No United States branch shall be or continue to be authorized to do an insurance business in this State if it fails to keep full and correct entries of its transactions, which shall at all times be open to the inspection of persons invested by

law with the rights of inspection and be maintained in its principal office within this State.

§431: -108 Authority of commissioner. Whenever it appears to the commissioner from any annual statement, quarterly statement, trustee surplus statement, or any other report that a United States branch's trustee surplus is reduced below minimum capital and surplus or the authorized control level risk-based capital, whichever is greater, required to be maintained by a domestic insurer licensed to transact the same kinds of insurance, the commissioner may proceed against the insurer pursuant to articles 5 and 15 as an insurer whose condition is such that its further transaction of business in the United States will be hazardous to its policyholders, its creditors, or the public in the United States."

SECTION 3. This Act shall take effect upon its approval.

(Approved June 15, 2004.)

ACT 121

S.B. NO. 2908

A Bill for an Act Relating to Business Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part X a new section to be appropriately designated and to read as follows:

"§414D- Definitions. As used in this part:

"Association" means an association organized under chapter 421 or 421C.

"Merger" means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

"Organizing articles" means:

- (1) For an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

"Other business entity" means a profit corporation, limited liability company, general partnership, limited partnership, limited liability partnership, or association."

SECTION 2. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part XIII a new section to be appropriately designated and to read as follows:

"§414D- Trustees or receivers for dissolved corporations; appointment; powers; duties. (a) When any corporation organized under the laws of this State shall be or shall have been dissolved or shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, member, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the

directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between this section and any common law, statute, or rule on the subject, the more beneficial provisions favoring the applicant shall prevail.”

SECTION 3. Section 421-1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

““Entity” includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

“Individual” means a natural person, or the estate of an incompetent or deceased individual.

“Merger” means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

“Organizing articles” means:

- (1) For an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, nonprofit corporation, general partnership, limited partnership, limited liability partnership, or limited liability company.”

SECTION 4. Section 414-3, Hawaii Revised Statutes, is amended by amending the definition of “entity” to read as follows:

““Entity” includes domestic and foreign corporations[;], domestic professional corporations[;], domestic and foreign limited liability companies[;], domestic and foreign ~~not-for-profit~~ nonprofit corporations[;], domestic and foreign business trusts[;], estates[;], domestic and foreign partnerships[;], domestic and foreign limited partnerships[;], domestic and foreign limited liability partnerships[;], trusts[;], two or more persons having a joint or common economic interest[;], associations and cooperative associations, and state, federal, and foreign governments.”

SECTION 5. Section 414-125, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation shall notify shareholders of the date, time, and place, if any, of each annual and special shareholders’ meeting no fewer than ten nor more than sixty days before the meeting date. If ~~[a meeting is held solely by]~~ means of remote communication[;], are authorized for use in a meeting, regardless of whether the meeting is held at a designated place or solely by means of remote communication, the notice shall also inform shareholders of the means of remote communication by which shareholders may be deemed to be present in person and allowed to

vote. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.”

SECTION 6. Section 414-163, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

- (1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;
- (2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to limitations in section 414-111[;], including without limitation the elimination, restriction, or expansion of dissenter’s rights;
- (3) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
- (4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including without limitation, the use of weighted voting rights or director proxies[;], or the validity and enforceability of actions that are approved by the directors or shareholders of a corporation, as applicable, in writing, without a meeting, and with the written consent of less than all the directors or shareholders entitled to vote on any such action. An agreement covered under this paragraph may include an agreement to permit any action required or permitted by this chapter to be taken at a shareholders’ meeting to be taken without a meeting; provided that consents in writing, setting forth the action so taken, shall be signed or given by electronic transmission by the holders of the outstanding shares entitled to vote on the action having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, notwithstanding section 414-124;
- (5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;
- (6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
- (7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or
- (8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

- (1) Set forth:
 - (A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

- (B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;
- (2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; ~~and~~
- (3) Valid for ten years[.]; unless the agreement provides otherwise[.], in which case the agreement may be valid for a longer or shorter term than ten years, or perpetually; and
- (4) Enforceable against the corporation and all present and future shareholders of the corporation, including persons who become shareholders subsequent to the approval or execution of the agreement and who did not approve or execute the agreement.

(c) The existence of an agreement authorized by this section shall be noted conspicuously in the corporation's articles of incorporation, on the front or back of each certificate for outstanding shares, or on the information statement required by section 414-87(b). If, at the time of the agreement, the corporation has shares outstanding represented by certificates[.], and the existence of the agreement is not noted in the corporation's articles of incorporation in compliance with this subsection, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement in the articles of incorporation, on the certificate, or on the information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement, shall be entitled to rescission of the purchase. A purchaser shall ~~be deemed to have knowledge of~~ not be entitled to rescission as described in the preceding sentence if, at the time of purchase, the existence of the agreement ~~[if its existence]~~ is noted in the articles of incorporation, on the certificate for the shares, or on the information statement for the shares, in compliance with this subsection and, if the shares are not represented by a certificate[.] and the existence of the agreement is not noted in the articles of incorporation in compliance with this subsection, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares."

SECTION 7. Section 414-310, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
"'Association' means an association organized under chapter 421 or 421C."
2. By amending the definitions of "organizing articles" and "other business entity" to read:
"'Organizing articles' means:
 - (1) For ~~[a]~~ an association, corporation, or nonprofit corporation, the articles of incorporation;
 - (2) For a general partnership or limited liability partnership, the registration statement;
 - (3) For a limited partnership, the certificate of limited partnership; and
 - (4) For a limited liability company, the articles of organization."Other business entity" means a nonprofit corporation, limited liability company, general partnership, limited partnership, ~~[or]~~ limited liability partnership[.], or association."

SECTION 8. Section 414-311, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
- (2) The name of the surviving entity with or into which the other entity or entities will merge;
- (3) The terms and conditions of the merger;
- (4) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving ~~[or any other corporation]~~ entity, or into cash or other property in whole or in part;
- (5) The street address of the surviving entity’s principal place of business or, if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (6) Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.”

SECTION 9. Section 414-311.6, Hawaii Revised Statutes, is amended to read as follows:

“§414-311.6 Foreign mergers. ~~[Filings for mergers between foreign entities registered in this State shall be subject to section 414-315(d).]~~ (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger in the form prescribed by subsection (a).”

SECTION 10. Section 414-315, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, ~~[the surviving or acquiring corporation shall deliver to the department director for filing]~~ articles of merger or share exchange ~~[setting forth:]~~ shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger or share exchange shall set forth:

- (1) For a merger, the name and jurisdiction of each entity that is a party to the merger and the name, address, and jurisdiction of the surviving

entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;

(2) For a share exchange, the name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(3) A statement that the plan of merger or share exchange has been approved by each entity involved in the merger or share exchange;

~~[(4) If shareholder approval was not required, a statement to that effect;~~

~~(5) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:~~

~~(A) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and~~

~~(B) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group;~~

~~(6)~~ (4) If a merger, a statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and

~~[(7)]~~ (5) A statement that includes:

(A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;

(B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and

(C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity."

2. By amending subsection (d) to read:

"(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger~~[- provided that:~~

~~(1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or~~

~~(2) If a foreign entity registered in this State does not survive the merger, the surviving entity shall file with the department director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective]."~~

SECTION 11. Section 414-316, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When a merger takes effect:

(1) Every other ~~[corporation]~~ entity that is a party to the merger merges into the surviving ~~[corporation]~~ entity and the separate existence of

every [corporation] entity except the surviving [corporation] entity ceases;

- (2) The title to all real estate and other property owned by each [corporation] entity that is a party to the merger is vested in the surviving [corporation] entity without reversion or impairment;
- (3) The surviving [corporation] entity has all liabilities of each [corporation] entity that is a party to the merger;
- (4) A proceeding pending against any [corporation] entity that is a party to the merger may be continued as if the merger did not occur or the surviving [corporation] entity may be substituted in the proceeding for the [corporation] entity whose existence ceased;
- (5) The organizing articles [of incorporation] of the surviving [corporation] entity are amended to the extent provided in the plan of merger and indicated in the articles of merger; and
- (6) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving [or any other corporation] entity or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under part XIV.’

SECTION 12. Section 414-342, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder’s shares in the event of, any of the following corporate actions:

- (1) Consummation of a plan of merger to which the corporation is a party:
 - (A) If shareholder approval is required for the merger by section 414-313 or the articles of incorporation [and]; provided that the shareholder is entitled to vote on the merger; or
 - (B) If the corporation is a subsidiary that is merged with its parent under section 414-314;
- (2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;
- (3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;
- (4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter’s shares because it:
 - (A) Alters or abolishes a preferential right of the shares;
 - (B) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
 - (C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;
 - (D) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

- (E) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 414-74;
- (5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or
- (6) Consummation of a plan of conversion to which the corporation is the converting entity, if the shareholder is entitled to vote on the plan.”

SECTION 13. Section 414-384, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-384]]~~ **Revocation of dissolution.** (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution ~~[must]~~ shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation’s board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation’s board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If shareholder action was required to revoke the dissolution, the information required by section 414-383(a)(3) or (4).

(d) Within the applicable revocation of dissolution period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then revocation of dissolution shall be allowed only upon the registration of a new name by the dissolved corporation pursuant to the amendment provisions of this chapter.

~~[(d)]~~ (e) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

~~[(e)]~~ (f) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.”

SECTION 14. Section 414-422, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When any corporation organized and authorized to issue shares under the laws of this State ~~[is]~~ shall be or shall have been dissolved or ~~[ceases]~~ shall cease or shall have ceased to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the persons responsible for settling the

unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.”

SECTION 15. Section 414D-14, Hawaii Revised Statutes, is amended by amending the definition of “entity” to read as follows:

““Entity” includes domestic and foreign corporations[;], domestic professional corporations[;], domestic and foreign limited liability companies[;], domestic and foreign ~~[not for profit]~~ nonprofit corporations[;], domestic and foreign business trusts[;], estates[;], domestic and foreign partnerships[;], domestic and foreign limited partnerships[;], domestic and foreign limited liability partnerships[;], trusts[;] ~~and~~, two or more persons having a joint or common economic interest[;], associations and cooperative associations, and state, federal, and foreign governments.”

SECTION 16. Section 414D-201, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Pursuant to a plan of merger approved as provided in section 414D-202, a domestic or foreign corporation may merge with one or more ~~[profit or nonprofit]~~ domestic professional corporations, or with one or more associations, one or more corporations, or other business entities organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, associations, domestic or foreign corporations, or other business entities whether domestic or foreign, being the surviving ~~[corporation,]~~ entity as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign corporation that is a party to the merger is organized.

(b) The plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each [corporation planning to merge] entity that is a party to the merger, and the name of the surviving ~~[corporation]~~ entity into which each plans to merge;
- (2) The terms and conditions of the merger;
- (3) The manner and basis for converting memberships of each merging corporation into memberships, obligations, or securities of the surviving ~~[or any other corporation]~~ entity or into cash or other property in whole or part;
- (4) The street address of the surviving ~~[corporation's]~~ entity's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (5) Amendments, if any, to the organizing articles [of incorporation or bylaws] of the surviving ~~[corporation to be effected by the planned merger]~~ entity or, if no amendments are desired, a statement that the organizing articles [of incorporation] of the surviving ~~[corporation]~~ entity shall not be amended pursuant to the merger.”

2. By amending subsection (e) to read:

“(e) The surviving ~~[corporation]~~ entity shall furnish a copy of the plan of merger, on request and without cost, to any member or shareholder of any ~~[corporation]~~ entity that is a party to the merger.”

SECTION 17. Section 414D-201.5, Hawaii Revised Statutes, is amended to read as follows:

“§414D-201.5 Foreign mergers. ~~[Filings for mergers between foreign entities registered in this State shall be subject to section 414D-203(d).]~~ (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger in the form prescribed by subsection (a).”

SECTION 18. Section 414D-203, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) After a plan of merger is approved by the board of directors and, if required by section 414D-202, by the members and any other persons, ~~[the surviving or acquiring corporation shall deliver to the department director]~~ articles of merger ~~[setting forth:]~~ shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger shall set forth:

- (1) The name and jurisdiction of ~~[incorporation of]~~ each ~~[of the corporations]~~ entity that ~~[are parties]~~ is a party to the merger, and the name, address, and jurisdiction of ~~[incorporation of]~~ the surviving ~~[corporation:]~~ entity;
- (2) A statement that the plan of merger has been approved by ~~[the board of directors of]~~ each ~~[corporation]~~ entity involved in the merger ~~[and if required by section 414D-202, by the members; provided that if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;~~
- (3) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and
 - (B) The total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;
- (4) If approval of the plan by some person or persons other than the members or the board is required pursuant to section 414D-202, a statement that the approval was obtained;

- (5) ~~If a merger, a~~; (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
- [(6)] (4) A statement that includes:
- (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity."
2. By amending subsection (d) to read:
- "(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger~~;~~ ~~provided that:~~
- (1) ~~If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or~~
 - (2) ~~If a foreign entity registered in this State does not survive the merger, the surviving entity shall file with the department director a certificate evidencing the merger as provided in [paragraph] (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective]."~~

SECTION 19. Section 414D-244, Hawaii Revised Statutes, is amended to read as follows:

"§414D-244 Revocation of dissolution. (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution ~~[must]~~ shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

- (6) If member or third person action was required to revoke the dissolution, the information required by section 414D-243(a)(5) or (6).

(d) Within the applicable revocation of dissolution period, should the name of the corporation, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then revocation of dissolution shall be allowed only upon the registration of a new name by the dissolved corporation pursuant to the amendment provisions of this chapter.

~~[(d)]~~ (e) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

~~[(e)]~~ (f) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.”

SECTION 20. Section 414D-308, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each domestic corporation, and each foreign corporation authorized to transact business in the State, shall deliver to the department director an annual report on a form prescribed and furnished by the department director that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The mailing address of its principal office, the address of its registered office in this State, and the name of its registered agent at its registered office in the State;
- (3) The names and ~~[business or residence]~~ addresses of its directors and ~~[principal]~~ officers; and
- (4) A brief description of the nature of its activities~~[- and~~
- (5) ~~Whether or not it has members].”~~

SECTION 21. Section 415A-18, Hawaii Revised Statutes, is amended to read as follows:

“**§415A-18 [Involuntary] Administrative dissolution; reinstatement.** (a) The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two ~~[consecutive]~~ years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

Before the director may declare a corporation dissolved, the director shall give notice of the ground or grounds for dissolution ~~[as provided in section 414-401]~~ by mailing the notice to the professional corporation at its last known address appearing in the records of the director~~[- and may give public notice of the intention to dissolve the corporation].~~

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after the date of mailing of the director's written notice, the director shall administratively dissolve the corporation by signing a decree of dissolution that recites the ground for dissolution and its effective date. The decree shall be filed in the director's office. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

~~[(b)]~~ (c) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any professional corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section 414-473. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved professional corporation with full powers to settle its affairs.

~~[(e) The director shall, in each case, deliver a copy of the decree of dissolution to the director of taxation and to the finance officer of each county.]~~

(d) In each case where the director has given a professional corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a) of this section.

(e) Within two years after the involuntary dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the applicable reinstatement period, should the name of the professional corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved professional corporation pursuant to the amendment provisions of this chapter.

(f) A professional corporation whose articles of incorporation have expired shall cease to exist by operation of law."

SECTION 22. Section 419-7, Hawaii Revised Statutes, is amended to read as follows:

~~"§419-7 [Extensions and renewals. The duration of the corporation, if not perpetual, may be extended by amendment of its articles, and at any time not more than two years after the expiration of its articles it may be renewed upon application to the director of commerce and consumer affairs for that purpose; provided that no renewal shall become effective until it is allowed by the director by and with the consent of the governor. Such application shall be made in the manner and form provided for amendment of articles, as nearly as may be.] Duration. If a corporation sole was dissolved due to the expiration of its period of duration, the corporation sole, at any time within two years of such dissolution, may amend its articles of incorporation to extend its period of duration; provided that if the name of the corporation sole, or a name substantially identical is registered or reserved by another entity, or if such name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of corporate existence shall be allowed only upon the registration of a new name by the corporation sole pursuant to section 419-4."~~

SECTION 23. Section 419-9, Hawaii Revised Statutes, is amended to read as follows:

“§419-9 Corporations sole heretofore formed; general laws. (a) Any corporation sole heretofore formed and existing under the laws of this State for ecclesiastical purposes may elect to continue its existence under this chapter by filing an application for amendment of its charter in the manner and form provided for an application for an original charter, together with the required certificates as to the incumbency of the corporation. If such amendment is allowed by the director of commerce and consumer affairs ~~[by and with the consent of the governor]~~, this chapter thereupon shall apply to such corporations sole the same as to corporations formed under this chapter.

(b) Any charter or amended charter granted or corporation created or existing under the authority of this chapter shall be subject to all general laws enacted in regard to corporations.”

SECTION 24. Section 421-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

~~“(e) [An association organized under this chapter shall be subject to chapter 414 relating to the payment of fees by corporations to the director.] Except for annual reports, statutes and fees that apply to domestic profit corporations shall apply to stock associations. Except for annual reports, statutes and fees that apply to domestic nonprofit corporations shall apply to nonstock associations.”~~

SECTION 25. Section 421-21.6, Hawaii Revised Statutes, is amended to read as follows:

“§421-21.6 Mergers [and consolidation]; procedures; approval by members. (a) ~~[Unless otherwise prohibited, any]~~ Pursuant to a plan of merger, any agricultural cooperative association organized under this chapter may merge [or consolidate with another association or with any association incorporated under the laws of another state by complying with this section or the law of the state where the surviving or new association will exist.] with one or more domestic professional corporations, or with one or more associations, or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, associations, or other business entities whether domestic or foreign, being the surviving entity as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign association or entity that is a party to the merger is organized.

(b) The board or a committee selected by the board or the members shall adopt a ~~[written]~~ plan of merger ~~[or consolidation setting]~~ that sets forth:

- (1) The names of the ~~[associations]~~ entities proposing to merge ~~[or consolidate];~~
- (2) The name of the surviving ~~[or new association;]~~ entity;
- (3) The manner and basis of converting the stock or membership of each association into stock or membership in the surviving ~~[or new association;]~~ entity;
- (4) The terms of the merger ~~[or consolidation];~~
- (5) The proposed effect of the ~~[consolidation or]~~ merger on the members of the association; and
- (6) ~~[For a consolidation, the articles of the new association:]~~ Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.

(c) The board of each association shall mail a notice of the proposed merger ~~[or consolidation]~~ to each member. The notice shall contain the full text of the

merger ~~[or consolidation]~~ plan and the time and place of the meeting at which the plan will be considered. An association with more than two hundred members may publish the notice as provided in section 421-12.

(d) At the meeting, a vote of the members shall be taken on the proposed plan; provided that a quorum of the members ~~[is]~~ shall be registered as being present or represented by proxy vote at the meeting. The plan shall be approved upon receiving the affirmative vote of:

- (1) Two-thirds of the votes cast; or
- (2) For an association with articles or bylaws requiring more than two-thirds of the votes cast or other conditions for approval, a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

After the plan has been approved, the chair, vice-chair, president, vice president, secretary, or assistant secretary of each association merging ~~[or consolidating]~~ shall sign the articles of merger ~~[or consolidation and a statement that the plan was adopted according to this section.]~~ which shall also be signed on behalf of each other entity that is a party to the merger.

(e) The articles of merger ~~[or consolidation]~~ shall be filed with the director of commerce and consumer affairs. The articles shall set forth:

- (1) The name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;
- (2) A statement that the plan of merger has been approved by each entity involved in the merger in accordance with the applicable laws of each entity;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
- (4) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.

Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign entity that is not the surviving entity in the merger.

~~[(f) For a merger, the articles of the surviving cooperative or association shall be deemed amended to the extent provided in the articles of merger.~~

(g) ~~(f)~~ The merger ~~[or consolidation]~~ shall become effective upon the effective date and time of filing the articles of merger ~~[or consolidation]~~, or upon a date and time subsequent to the filing as set forth in the articles, but not more than thirty days after being filed.

~~[(h) The director of commerce and consumer affairs shall issue a certificate of merger or consolidation.~~

~~(i) (g)~~ A certified copy of the articles ~~[or of a certificate]~~ of merger ~~[or consolidation issued by the director]~~ shall be filed with the department of agriculture.

~~[(j) After the effective date, the associations that are parties to the plan shall become a single association. For a merger, the surviving association shall be the association designated in the plan. For a consolidation, the new cooperative shall be the association provided for in the plan. Except for the surviving or new association, the separate existence of all cooperatives and associations that are parties to the plan shall cease on the effective date of the merger or consolidation.~~

~~The surviving or new association shall possess all of the rights and property of each of the merged or consolidated associations, and shall be responsible for all their obligations. The title to property of the merged or consolidated association shall be vested in the surviving or new association without reversion or impairment of the title caused by the merger or consolidation.]~~

~~(h) When a merger takes effect:~~

- ~~(1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;~~
- ~~(2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;~~
- ~~(3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;~~
- ~~(4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and~~
- ~~(5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.~~

~~(i) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:~~

- ~~(1) The date the surviving entity receives the process, notice, or demand;~~
- ~~(2) The date shown on the return receipt, if signed on behalf of the surviving entity; or~~
- ~~(3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.~~

~~[(k)] (j) The rights of creditors shall not be impaired by the merger [or consolidation] without the creditors' consent.~~

~~[(H)] (k) The director of commerce and consumer affairs may charge a filing fee for filing the articles.~~

~~(l) For the purposes of a merger, an association shall be defined as an association organized under chapter 421 or 421C."~~

SECTION 26. Section 421-23, Hawaii Revised Statutes, is amended to read as follows:

"§421-23 Taxation. ~~[Domestic associations organized under this chapter shall pay an annual license fee of \$10 to the director of commerce and consumer affairs (and which shall be a general realization of the State) which shall be in lieu of all other corporation, franchise, and income taxes, and taxes and charges upon reserves held by the association for distribution to members, including without limitation upon the generality of the foregoing any taxes imposed under chapter 235.]~~ To obtain the exemptions from taxation granted by this section or any other law, the association annually shall file with the director of taxation a copy of its

report made under section 421-22, and in addition thereto, within ninety days after the close of its fiscal year, shall file with the tax assessor of each district in which there are persons doing business to whom it has paid, during the preceding fiscal year, any proceeds of goods marketed, a report showing the name of each person to whom the proceeds were paid, the total proceeds of sales for which such person is taxable under chapter 237 for the fiscal year, and the rate or rates of such tax applicable thereto or to the several amounts thereof, as the case may be.”

SECTION 27. Section 421C-31, Hawaii Revised Statutes, is amended to read as follows:

“§421C-31 Merger [~~and consolidation~~]. The general corporation laws relating to the merger [~~and consolidation~~] of domestic corporations shall apply to associations formed under this chapter.”

SECTION 28. Section 425-101, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:
““Entity” includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

““Individual” means a natural person, or the estate of an incompetent or deceased individual.”

2. By amending the definition of “person” to read:
““Person” [~~means an~~] includes any individual[, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality,] or [~~any other legal or commercial~~] entity.”

SECTION 29. Section 425-106, Hawaii Revised Statutes, is amended to read as follows:

“§425-106 Governing law. [~~The~~] (a) Except as otherwise provided in subsection (b), the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this State governs relations among the partners, and between the partners and the partnership, and the liability of partners for an obligation of a limited liability partnership.”

SECTION 30. Section 425-153, Hawaii Revised Statutes, is amended to read as follows:

“§425-153 Statement of qualification. A statement of qualification shall contain:

- (1) The name of the partnership; [~~and~~]
- (2) A statement that the partnership elects to be a limited liability partnership[-]; and
- (3) The mailing address of the partnership’s initial principal office, the street address of the partnership’s initial registered office in the State,

and the name of its initial registered agent at its initial registered office in the State.”

SECTION 31. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

“§425-158 Statement of foreign qualification. A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:
 - (A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and
 - (B) Section 425-151; [and]
- (2) A statement that the partnership elects to be a foreign limited liability partnership[-]; and
- (3) The mailing address of the partnership’s initial principal office, the street address of the partnership’s initial registered office in the State, and the name of its initial registered agent at its initial registered office in the State.”

SECTION 32. Section 425-201, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
 ““Association” means an association organized under chapter 421 or 421C.”

2. By amending the definitions of “organizing articles” and “other business entity” to read:

““Organizing articles” means:

- (1) For [a] an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

““Other business entity” means a corporation, [a] limited liability company, [or a] limited partnership[-], or association.”

SECTION 33. Section 425-202, Hawaii Revised Statutes, is amended to read as follows:

~~“§425-202 Foreign mergers. [Filings for mergers between foreign entities registered in this State shall be subject to section 425-204(d).] (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language a translation attested to under oath by the translator shall accompany the certificate.~~

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving

entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger in the form prescribed by subsection (a)."

SECTION 34. Section 425-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~"(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign general partnership or domestic or foreign limited liability partnership that is not the surviving entity in the merger[; provided that:~~

- ~~(1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or~~
- ~~(2) If a foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in subparagraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.¹⁾"~~

SECTION 35. Section 425E-102, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"'Entity' includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

"'Individual' means a natural person, or the estate of an incompetent or deceased individual."

2. By amending the definition of "person" to read:

"'Person' [means an] includes any individual[, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal] or [commercial] entity."

SECTION 36. Section 425E-210, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~"(a) Each limited partnership and each foreign limited partnership authorized to transact business in this State shall deliver to the director for filing an annual statement that sets forth:~~

- ~~(1) The name of the limited partnership and the state or country under whose law it is [organized; and] formed;~~
- ~~(2) The mailing address of the limited partnership's principal office, the street address of the limited partnership's registered office in this State, and the name of its registered agent at its registered office in this State[-]; and~~
- ~~(3) The name and address of each general partner."~~

SECTION 37. Section 425E-905, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§425E-905]]~~ **Name.** (a) A foreign limited partnership whose name does not comply with section 425E-108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with section 425E-108[-], by filing a copy of a certificate of registration of a trade name with the director. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under that name unless the foreign limited partnership is authorized to transact business in this State under another name.

(b) If a foreign limited partnership authorized to transact business in this State changes its name to one that does not comply with section 425E-108, it shall not thereafter transact business in this State until it complies with subsection (a) ~~[and obtains an amended certificate of authority].~~”

SECTION 38. Section 425E-907, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) If a foreign limited partnership transacts business in this State without a certificate of authority or cancels its certificate of authority, it ~~[shall appoint the director as its agent for service of process for rights of action arising out of the transaction of business in this State.]~~ consents that service of process in any action, suit, or proceeding based upon any cause of action arising out of the transaction of business in this State may thereafter be made on the partnership by service thereof on the director.”

SECTION 39. Section 425E-1101, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
 ““Association” means an association organized under chapter 421 or 421C.”

2. By amending the definitions of “organizing articles” and “other business entity” to read:

““Organizing articles” means:

- (1) For [a] an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, or limited liability limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

““Other business entity” means a corporation, limited liability company, general partnership, [or] limited liability partnership[-], or association.”

SECTION 40. Section 425E-1107, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited or limited liability limited partnership that is not the surviving entity in the merger~~[-; provided that:~~

- (1) ~~If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or~~
- (2) ~~If a foreign entity registered in this State shall not survive the merger, the surviving entity shall file with the director a certificate evidencing~~

~~the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving constituent foreign entity no later than sixty days after the merger is effective].”~~

SECTION 41. Section 425E-1109, Hawaii Revised Statutes, is amended to read as follows:

~~“[§425E-1109] Effect of merger[; dissenter’s rights].~~ (a) When a merger becomes effective:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and
- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A general partner or limited partner of a surviving limited partnership shall be liable for all obligations of a party to the merger for which the general partner or limited partner was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a limited partnership that is not the surviving entity in the merger shall not require the limited partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

~~[(e) The shareholders of a domestic corporation that is a party to a merger authorized by section 425E-1106 shall have the rights of dissenting shareholders in the manner provided in part XIV of chapter 414.]”~~

SECTION 42. Section 425E-1114, Hawaii Revised Statutes, is amended to read as follows:

~~“[§425E-1114] Foreign mergers. [Filings for mergers between foreign entities registered in this State shall be subject to section 425E-1107(d).] (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the department director a certificate evidencing the merger, duly authenticated by the proper officer~~

of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger in the form prescribed by subsection (a)."

SECTION 43. Section 428-101, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
"“Individual” means a natural person, or the estate of an incompetent or deceased individual.”

2. By amending the definitions of “entity” and “person” to read:
““Entity” [~~means a person other than an individual.~~] includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

“Person” [~~means an~~] includes any individual[, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal] or [commercial] entity.”

SECTION 44. Section 428-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsection (b), all the members of a limited liability company may enter into an operating agreement[, which must be in writing,] to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.”

SECTION 45. Section 428-901, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
““Association” means an association organized under chapter 421 or 421C.”

2. By amending the definitions of “organizing articles” and “other business entity” to read:

““Organizing articles” means:

- (1) For [a] an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, [a] general partnership, [a] limited partnership, [~~or a~~] limited liability partnership[,], or association.”

SECTION 46. Section 428-901.5, Hawaii Revised Statutes, is amended to read as follows:

“§428-901.5 Foreign mergers. ~~[Filings for mergers between foreign entities registered in this State shall be subject to section 428-905(d).]~~ (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language a translation attested to under oath of the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger in the form prescribed by subsection (a).”

SECTION 47. Section 428-903, Hawaii Revised Statutes, is amended to read as follows:

“§428-903 Effect of conversion. When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, or other securities in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic limited liability company, the members of the domestic limited liability company shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 414-342;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for such debts or obligations; or

- (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity; and
- (8) If the converted entity is a foreign limited liability company or other entity, such converted entity shall appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members of the converting domestic limited liability company[; and
- (9) ~~If the converting entity is a domestic limited liability company, section 428-907 shall apply as if the converted entity were the survivor of a merger with the converting entity].''~~

SECTION 48. Section 428-905, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as [~~a statement of dissolution~~] articles of termination or [as] an application for [~~withdrawal~~] cancellation for the respective domestic or foreign limited liability company that is not the surviving entity in the merger[; ~~provided that:~~

- (1) ~~If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or~~
- (2) ~~If a foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective].''~~

SECTION 49. Section 428-1002, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:

- (1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section 428-1005;
- (2) The name of the state or country under whose law it is organized;
- (3) A representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at [~~this~~] its principal office until cancellation, in accordance with section 428-1007, of the foreign limited liability company's authority to transact business in this State;
- (4) The mailing address of its principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office in this State;
- (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- (6) Whether the company is manager-managed, and:
 - (A) If so, the name and address of each manager; or
 - (B) If not, the name and address of each member;
- (7) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and

- (8) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State.”

SECTION 50. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the trade name to be recorded and shall issue to the applicant a certificate of registration. The certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the trade name throughout the State, for the term of five years from the date thereof; provided that the director shall not register any trade name which is substantially identical with any registered trade name or with the name of any corporation, partnership, limited partnership, limited liability partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, 425, 425E, and 428; provided further that the trade name is continued in actual use by the applicant in ~~[the] this~~ State ~~[or elsewhere in the United States]~~. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, limited partnership, limited liability partnership, or limited liability company name, or trade name.”

SECTION 51. Section 482-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Sections 482-1 to 482-9 are applicable to all registrations filed in the office of the director; the intent being that all trade names not used by the applicant in this State ~~[or elsewhere in the United States]~~ may be immediately reissued to such applicant who is actually using the same.”

SECTION 52. Section 482E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Commissioner” means the commissioner of securities of the department of commerce and consumer affairs.”

SECTION 53. Section 482E-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who is engaged or hereafter engaged directly or indirectly in the sale of a franchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to this chapter, shall be amenable to the jurisdiction of the courts of this State, and shall be amenable to the service of process as provided by law and rule. Every person who sells a franchise in this State~~[other than a Hawaii corporation,]~~ shall file with the director in such form as the director by rule ~~[prescribed,]~~ prescribes, an irrevocable consent appointing the ~~[director]~~ commissioner or the ~~[director’s]~~ commissioner’s successor in office to be the person’s attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against the person or the person’s successor, executor, administrator, or personal representative which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous sale under this law need not file another. Service may be made by leaving a copy of the process in the office of the ~~[director]~~ commissioner but ~~[it]~~ is not effective unless:

- (1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by the plaintiff forthwith sends notice of the service and a

copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the director; and

- (2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows."

SECTION 54. Section 485-1, Hawaii Revised Statutes, is amended by amending the definition of "investment adviser" to read as follows:

"(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- (A) A bank, savings institution, or trust company;
- (B) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the lawyer's, accountant's, engineer's, or teacher's profession;
- (C) A dealer whose performance of these services is solely incidental to the conduct of the dealer's business as a dealer and who receives no special compensation for them;
- (D) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- (E) A person whose advice, analyses, or reports relate only to securities exempted by section 485-4(1);
- (F) A person who has no place of business in this State if:
 - (i) The person's only clients in this State are other investment advisers, dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
 - (ii) During any period of twelve consecutive months the person does not have more than five clients who are residents of this State other than those specified in clause (i);
- (G) A person who is employed by an investment company that is registered under the Investment Company Act of 1940;
- ~~[(H) A person who:~~
 - ~~(i) Is registered with the United States Securities and Exchange Commission under the Investment Advisers Act of 1940;~~
 - ~~(ii) Does not have custody of any client money, securities, or other assets;~~
 - ~~(iii) Does not collect fees from clients more than six months in advance of the end of the period for which the fees are intended to compensate the person for the person's services;~~
 - ~~(iv) Has discretionary authority over client money, securities, or other assets only to invest in securities in which the person has no ownership interest or is considered to have an ownership interest; and~~
 - ~~(v) Does not advise a client whose money, securities, and other assets under management by the person have a market value~~

~~of less than \$250,000 per each separate account under management on the date of the inception of the client relationship;~~

- (H) A person who is excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940;
- (I) A federal covered adviser; or
- (J) Other persons not within the intent of this paragraph as the commissioner by rule or order may designate."

SECTION 55. Section 485-4, Hawaii Revised Statutes, is amended to read as follows:

"§485-4 Exempt securities. The following securities are exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state or territory, any political subdivision of a state or territory, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of the province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by a financial services loan company duly licensed under the financial services loan law of the State of Hawaii;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in the State;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state or territory and authorized to do business in the State;
- (6) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of the State;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is:
 - ~~(A)~~ Subject to the jurisdiction of the Interstate Commerce Commission;
 - (A) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act;
 - ~~(B)~~ Regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or
 - ~~(C)~~ Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States or any state or territory;

- (8) ~~[Any security, other than a security that is a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any registration or filing requirements under this chapter, that is listed or approved for listing upon notice of issuance on any exchange registered or exempted under the Securities Exchange Act of 1934, as amended; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe for any of the foregoing;] A federal covered security specified in section 18(b)(1) of the Securities Act of 1933 or by rule adopted under that provision, or a security listed or approved for listing on another securities market specified by rule under this chapter;~~
- (9) Any security issued by any issuer organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal;
- (11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan;
- (12) Any option on a commodity futures contract subject to regulation under the Commodity Exchange Act;
- (13) Any cooperative association membership stock, membership certificates or shares, or membership capital, pursuant to section 421C-36, or chapter 421;
- (14) Any security for which a registration statement has been filed under the Securities Act of 1933; provided that no sale shall be made until the registration statement has become effective;
- (15) Any variable annuity contract which is an investment contract prepared by a life insurance company designed to offer continuous income through participation in a mutual fund portfolio or a variable annuity contract based upon a separate account which is registered as a management investment company with the Securities and Exchange Commission; and
- (16) Any security appearing on the list of over-the-counter and foreign securities approved for margin by the Board of Governors of the Federal Reserve System or any such security incorporated by reference to the list of over-the-counter and foreign securities approved for margin by the Board of Governors of the Federal Reserve System; any other securities of the same issuer that are of senior or substantially equal rank; and any warrant or right to purchase or subscribe to any security described in this paragraph."

SECTION 56. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

"§485-6 Exempt transactions. The following transactions shall be exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

- (1) Any isolated nonissuer transaction, whether effected through a dealer or not;

- (2) Any nonissuer transaction in an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;
- (3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;
- (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
- (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (9) Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:
 - (A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) during any twelve consecutive months;
 - (B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;
 - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and
 - (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
- (10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;
- (11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or

- given directly or indirectly for soliciting any security holder in the State;
- (12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward the order is pending under either this chapter or the Act;
 - (13) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease which entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, subject, however, to section 485-7;
 - (14) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State of an apartment in a condominium project, and a rental management contract relating to the apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words "apartment", "condominium", and "project" are defined as they are defined in section 514A-3;
 - (15) Any transactions not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933;
 - (16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:
 - (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
 - (ii) The issuer is not in the development stage, without specific business plan or purpose;
 - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
 - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;
 - (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
 - (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop

- order entered by any state securities administrator or the United States Securities and Exchange Commission;
- (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
- (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
- (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:
 - (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
 - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;
- (D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section 485-24.6, and a \$200 filing fee; and
- (E) For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a);
- (17) Any offer or sale of a security effected by a resident of Canada who is excluded from the definition of "dealer" under section 485-1(3)(E);
- (18) Any transaction that is exempt or would be exempt under rule 701, 17 Code of Federal Regulations section 230.701, promulgated under section 3(b) of the Securities Act of 1933;
- (19) Any offer or sale of securities made in compliance with rules 501, 502, 503, and 505[~~and 506~~] of Regulation D, 17 Code of Federal Regulations sections 230.501, 230.502, 230.503, 230.505, [~~230.506,~~] 230.507, and 230.508 under the Securities Act of 1933; and
- (20) Any transaction that the commissioner may exempt, conditionally or unconditionally, by rules adopted in accordance with chapter 91 that:
 - (A) Furthers the objectives of compatibility with exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states; or
 - (B) The commissioner finds that registration is not necessary or appropriate in the public interest for the protection of investors."

SECTION 57. Section 485-14, Hawaii Revised Statutes, is amended to read as follows:

“§485-14 Registration of dealers, investment advisers, salespersons, and investment adviser representatives. (a) It is unlawful for any person to transact business in this State as a dealer, investment adviser, salesperson, or investment adviser representative unless registered under this chapter. However, nothing in this chapter shall prevent the commissioner from participating, in whole or in part, in the Central Registration Depository system, in cooperation with the National Association of Securities Dealers, Inc., other states, and the United States, to the extent participation is deemed to be in the public interest of this State.

~~[(b) Eligibility for registration as a dealer. To be eligible for registration as a dealer, an applicant shall have had (or if the applicant is a partnership or corporation have at least one partner, officer, or employee who has) at least one year of experience as a full-time security salesperson or experience as a security salesperson on a part-time basis found by the commissioner of securities to be substantially equivalent thereto; provided that this experience requirement shall not apply to issuers of securities applying for registration as dealers for the sole purpose of issuing and selling securities issued by them.~~

(e) (b) Application for registration as a dealer. An application for registration as a dealer shall be filed with the office of the commissioner in such form as the commissioner may prescribe by rule or order. The commissioner may also require additional information regarding the applicant's previous history, record, and association, including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
- (2) The applicant's financial condition and history;
- (3) Disclosure as to whether the dealer, or any person employed by or associated in business with the dealer, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the dealer under section 485-15; and
- (4) Any other information that the commissioner deems necessary to establish the qualifications of the applicant.

There shall be filed in or with such application an irrevocable consent to the service of process upon the commissioner in actions against the dealer in manner and form prescribed by the commissioner by rule or order.

~~[(d)] (c) Eligibility for registration as an investment adviser. To be eligible for registration under this chapter, an investment adviser shall have complied with the mandatory provisions of this section, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the applicant's knowledge of the securities business; provided that the commissioner may by rule set forth exemptions to the examination requirement.~~

(e) (d) Registration of investment advisers. An application for registration as an investment adviser, in such form as the commissioner may prescribe by rule or order, shall be filed with the office of the commissioner. The commissioner may also require additional information regarding the applicant's previous history, record, and association, including without limitation the following:

- (1) A balance sheet certified by an independent public accountant and other certified financial statements if the investment adviser has custody of or discretionary authority over client money, securities, or other assets, or an unaudited, verified balance sheet and financial statements if the investment adviser has no custody of or discretionary authority over client money, securities, or other assets. If the investment adviser maintains its principal place of business in a state other than this State and the investment adviser is registered in that state and in compliance with its financial reporting requirements, this requirement shall be

deemed satisfied by the investment adviser filing with the commissioner a copy of those financial statements, if any, that are required to be filed by the adviser in the state where it maintains its principal place of business;

- (2) Disclosure as to whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485-15; and
- (3) Other information as to the applicant's previous history, record, and association that the commissioner deems necessary including:
 - (A) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
 - (B) The applicant's financial condition and history; and
 - (C) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

To the extent appropriate, the commissioner shall use uniform registration application forms adopted by the North American Securities Administrators Association, the Securities and Exchange Commission, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 for purposes of this section; and shall, to the extent appropriate, permit the electronic filing of such forms through the Central Registration Depository or the Investment Adviser Registration Depository of the National Association of Securities Dealers.

[(f)] (e) Approval, bond. If the commissioner finds that the applicant for registration as a dealer is eligible for registration, then the commissioner shall register the applicant as a dealer upon payment of the fee hereinafter provided and, except as otherwise provided in this subsection, upon the dealer's filing of a bond in the sum of \$5,000 running to the State conditioned upon the faithful compliance with this chapter by the dealer and by all salespersons registered by the dealer while acting for the dealer. The bond shall be executed as a surety by a surety company authorized to do business in the State; provided that no bond is required of or from any applicant if the applicant at the time of making application is a member of any recognized stock or bond exchange which has been in existence for a period of five years prior to April 29, 1931; provided further that no bond is required of a dealer if the aggregate par value of the securities to be sold is less than \$5,000 or in the case of no par value stock, if the price at which the stock is to be offered to the public is less than \$5,000 if the person selling or offering the securities for sale to the public notifies the commissioner in writing of the person's intention to make the sale and after the sale files with the commissioner a statement of the kind and amount of stock sold and the price received therefor, but where the aggregate par value of the securities or the price at which the stock is to be offered to the public is less than \$5,000 no more than one sale or offering shall be allowed within a period of one year; provided further that in lieu of the above bond, any dealer may deposit and keep deposited with the commissioner cash in the amount of \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$5,000, which cash or securities shall be held in trust to fulfill the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the dealer depositing the same. No

bond shall be required under this section or under this chapter of any dealer that is registered under the Securities Exchange Act of 1934.

~~[(g)]~~ (f) Investment adviser's approval; bond. If the commissioner finds that the applicant for registration as an investment adviser is eligible for registration, the commissioner shall register the investment adviser upon a payment of a fee hereinafter provided, and, except as otherwise provided in this subsection, upon the investment adviser filing a bond in a sum as provided in rules adopted by the commissioner. The bond shall be conditioned upon the faithful compliance with this chapter by the investment adviser. The bond shall be executed as a surety by a surety company authorized to do business in the State or as a security to be approved by the commissioner. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser ~~[is]~~ shall be registered in the state where it maintains its principal place of business and ~~[is]~~ in compliance with that state's net capital and bonding requirements, if any.

~~[(h)]~~ (g) Eligibility for registration as a salesperson. To be eligible for registration under this chapter, a salesperson shall have complied with the mandatory provisions of this section, shall be designated as a salesperson by a registered dealer, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the salesperson's knowledge of the securities business. Every person required to take such an examination shall, at or before the time the person takes the same, pay a fee as prescribed by the commissioner. However, registration is not required of a salesperson who represents a dealer in effecting transactions in this State limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. No person shall be designated as a salesperson by, or shall act as a salesperson for, more than one registered dealer.

~~[(i)]~~ (h) Registration of salespersons. An application for registration as a salesperson shall be filed by a registered dealer with the office of the commissioner in such form as the commissioner may prescribe by rule or order. The commissioner may also require additional information regarding the applicant's history, record, and association including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (2) The applicant's financial condition and history;
- (3) Disclosure as to whether the salesperson or any person associated in business with the salesperson is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the salesperson under section 485-15; and
- (4) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds a salesperson designated by any registered dealer to be eligible for registration as a salesperson, the commissioner shall register the person as a salesperson upon the payment of the fee hereinafter provided.

~~[(j)]~~ (i) Eligibility for registration as an investment adviser representative. To be eligible for registration under this chapter, an investment adviser representative shall have complied with the mandatory provisions of this section, shall be designated as a representative by a federal covered adviser or a registered investment adviser, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the representative's knowledge of the investment advisory and securities business; provided that the commissioner may by rule set forth exemptions to the examination requirement. No person shall be designated as an investment adviser representative by, or shall act as an investment adviser

representative for, more than one federal covered adviser or registered investment adviser.

~~[(k)]~~ (j) Registration of investment adviser representative. An application for registration as an investment adviser representative shall be filed with the office of the commissioner in such form as the commissioner may prescribe by rule or order. The commissioner may also require additional information regarding the applicant's history, record, and association including without limitation the following:

- (1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
- (2) Disclosure as to whether the investment adviser representative, or any person associated in business with the investment adviser representative, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser representative under section 485-15; and
- (3) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds an investment adviser representative designated by any federal covered adviser or investment adviser to be eligible for registration as an investment adviser representative, the commissioner shall register the person as an investment adviser representative upon the payment of a fee hereinafter provided.

~~[(4)]~~ (k) Recording; duration; renewal; fee. The names and business addresses of all persons registered under this chapter as dealers, investment advisers, salespersons, or investment adviser representatives, and all orders with respect thereto, shall be open to public inspection. Except as otherwise provided by the commissioner by rule or order, every registration for dealers, investment ~~[[advisers[]]~~, salespersons, and investment adviser representatives under this section shall expire on December 31 of each year unless renewed prior to expiration. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the year, unless the dealer, investment adviser, salesperson, or investment adviser representative is registered with the commissioner through the Central Registration Depository system or the Investment Adviser Registration Depository, in which case the renewal shall be filed with the commissioner as provided through that system. Any applicant for renewal of a dealer, investment adviser, salesperson, or investment adviser representative registration who does not submit the application within the time prescribed by this section shall pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer or investment adviser registration who submits the application after December 31 shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser, salesperson, or investment adviser representative may be terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, registered salesperson, registered investment adviser, or registered investment adviser representative concerned, and the termination shall take effect as of the date and time of filing of the notice. The fee for registration and for each renewal shall be \$200 in the case of dealers, \$100 in the case of investment advisers, and \$50 in the case of salespersons and investment adviser representatives.

~~[(m)]~~ (l) Changes. If any information contained in an application for registration filed with the commissioner under this chapter becomes inaccurate or changes, the registrant shall promptly file a correcting amendment with the commissioner. If the registrant is a salesperson or investment adviser representative, the dealer or investment adviser with which such registrant is affiliated or employed by shall file the amendment with the commissioner.

~~[(n)]~~ (m) Notice of intent to offer. Every registered dealer who intends to offer any security of any issue registered or to be registered shall notify the commissioner in writing of the dealer's intention to do so. The notice shall contain the name of the dealer and shall state the name of the security to be offered for sale, and whenever a dealer has prepared such notice and has forwarded the same by registered mail, postage prepaid, and properly addressed to the commissioner, such dealer, as to the contents of the notice and the filing thereof, is deemed to have complied with the requirements of this subsection.

~~[(o)]~~ (n) Issuers as dealers. Any issuer of a security required to be registered under this chapter selling such securities (other than in exempt transactions as defined in section 485-6), and any issuer of an exempt security as defined in section 485-4(9) and (10) offering such securities (other than (1) in exempt transactions as defined in section 485-6, or (2) through a dealer registered pursuant to this chapter) shall file with the commissioner a bond, or deposit securities or cash in an amount, based on the total capitalization, to be determined by the commissioner in the commissioner's discretion, which amount, however, shall not be less than \$5,000, nor more than \$25,000, subject also to the same conditions as herein prescribed in the case of dealers, and may appoint salespersons in the manner herein prescribed in the case of dealers.

~~[(p)]~~ (o) Capital requirement for dealers and investment advisers who have custody of or discretionary authority over client money, securities, or other assets. Except as otherwise provided in this subsection, the commissioner may by rule require a minimum capital requirement for registered dealers which shall not be less than \$5,000 in the case of dealers and prescribe a ratio between net capital and aggregate indebtedness. This subsection shall not apply to any dealer that is registered under the Securities Exchange Act of 1934. The commissioner may by rule require a net worth requirement which shall not be less than \$5,000 for investment advisers. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's net worth or net capital requirements, if any.

~~[(q)]~~ (p) A registered broker dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee for registration of a successor."

SECTION 58. Section 421-27, Hawaii Revised Statutes, is repealed.

SECTION 59. Section 425-206, Hawaii Revised Statutes, is repealed.

SECTION 60. Section 428-907, Hawaii Revised Statutes, is repealed.

SECTION 61. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 62. This Act shall take effect on July 1, 2004.

(Approved June 15, 2004.)

Notes

1. Period should not be bracketed.
2. Edited pursuant to HRS §23G-16.5.

ACT 122

H.B. NO. 2411

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, article 10A, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

“§431:10A- Self-employed persons, exemption. The requirements of this article related to mandated coverages for persons insured under accident and sickness policies shall not apply to accident and sickness policies for self-employed persons in this state; provided that this exemption shall apply only to those portions of the accident and sickness policies that cover self-employed persons in this state.”

SECTION 2. Section 431:2-201.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-201.5 Conformity to federal law. (a) The provisions of title 42 United States Code section 300gg, et seq., as they relate to group and individual health insurance shall apply to title 24, except:

- (1) Where state law provides greater health benefits or coverage than title 42 United States Code section 300gg, et seq., ~~[then-the]~~ state law shall be applicable; and
- (2) This section shall not ~~[be applicable]~~ apply to or affect life insurance, endowment, or annuity contracts, or any supplemental contract thereto, described in section 431:10A-101(4)[;].

~~[(3)]~~ (b) The following definitions shall be used when applying title 42 United States Code section 300gg, et seq.:

~~[(A)]~~ “Employee” means an employee who works on a full-time basis with a normal workweek of twenty hours or more[;].

~~[(B)]~~ “Group health issuer” means all persons offering health insurance coverage to any group or association, but shall not include those persons offering benefits exempted from title I of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 under sections 732(c) and 733(c) of title I of the Employee Retirement Income Security Act of 1974 and sections 2747 and 2791(c) of the Public Health Service Act[; and].

~~[(C)]~~ “Small employer” means an employer who employs between one and no more than fifty employees[;].

~~[(4)]~~ (c) All group health issuers shall offer all small group health plans to all small employers whose employees live, work, or reside in the group health issuer’s service areas; provided that the commissioner may exempt a group health issuer if the commissioner determines that the group health issuer does not have the capacity to deliver services adequately to enrollees of additional groups given its obligation to existing employer groups[; and].

~~[(5)]~~ (d) A group health issuer shall be prohibited from imposing any preexisting condition exclusion.

~~[For the purpose of this subsection, “small group health plans” means the medical plans currently offered, advertised, or marketed by a group health issuer for small employers.~~

~~(b)]~~ (c) The commissioner may adopt rules to implement, clarify, or conform title 24 to title 42 United States Code section 300gg, et seq.

[~~(e)~~] (f) The adoption of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, for the purposes of title 24 is not an adoption for any purposes for income taxes under chapter 235.

[~~(d)~~] (g) The State shall have jurisdiction over any matter that title 42 United States Code section 300gg, et seq., permits, including jurisdiction over enforcement.

(h) As used in this section, "small group health plans" means the medical plans currently offered, advertised, or marketed by a group health issuer for small employers."

SECTION 3. Section 431:2-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Orders and notices of the commissioner shall not be effective unless in writing and signed by the commissioner or ~~[the commissioner's authority.]~~ by a person acting under authority delegated by the commissioner pursuant to section 431:2-108."

SECTION 4. Section 431:2-208, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Every person and its officers, employees, and representatives subject to investigation or examination by the commissioner, ~~[its officers, employees, and representatives]~~ shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in the person's possession or control relating to the subject of the investigation or examination, and shall otherwise facilitate the investigation or examination.

(b) If the commissioner finds the accounts to be inadequate, improperly kept, or ~~improperly~~ posted, the commissioner may employ experts to rewrite, post, or balance ~~[them]~~ the accounts at the expense of the person being examined, if the person has failed to correct the accounting records after the commissioner has given the person written notice and a reasonable opportunity to do so."

SECTION 5. Section 431:2-209, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) One year after conclusion of the transactions to which they relate, the commissioner may destroy any correspondence, void or obsolete filings relating to rates, certificate of authority applications, self-insurance applications, registrations, foreign or alien insurers' annual statements ~~[and]~~, valuation reports, certificates of compliance and deposits, cards, and expired bonds. Three years after the conclusion of the transactions to which they relate, the commissioner may destroy any claim files, working papers of examinations, reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to license applications, records of hearings and investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner's possession."

SECTION 6. Section 431:2-212, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All arrangements made jointly with any one or more of the other states under ~~[items (2) and (3)]~~ subsection (a) shall be in writing executed on behalf of this State by the commissioner. Any such arrangement, as to participation of this State therein, shall be subject to termination by the commissioner at any time upon reasonable notice."

SECTION 7. Section 431:2-305, Hawaii Revised Statutes, is amended by amending subsections (c) through (e) to read as follows:

“(c) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner’s workpapers, and enter an order to:

- (1) Adopt the examination report as filed, or with modifications or corrections. If the examination report reveals that the insurer or person is operating in violation of any law, rule, or prior order of the commissioner, the commissioner may order the insurer or person to take any action the commissioner considers necessary and appropriate to cure the violation;
- (2) Reject the examination report with directions to the ~~[examiners]~~ examiner to reopen the examination for the purpose of obtaining additional data, documentation, or information, and refiling pursuant to subsection ~~[(a);]~~ (b); or
- (3) Call for an investigatory hearing with no ~~[less]~~ fewer than twenty days notice to the insurer or person for purposes of obtaining additional documentation, data, information, or testimony.

(d) Orders shall be issued and hearings conducted as follows:

- (1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner’s consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. Any order shall be considered a final administrative decision and may be appealed pursuant to chapter 91, and shall be served upon the insurer or person by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the insurer or person shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders, except that for examinations of producers, adjusters, independent bill reviewers, or surplus lines brokers, serving the copy of the adopted report and related orders by ~~[certified return]~~ certified mail, return receipt requested [mail will], shall satisfy the service requirement and no affidavits shall be required; and
- (2) Any hearing conducted under subsection (c)(3) by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as may be necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner’s review of relevant workpapers or raised by the written submission or rebuttal of the insurer or person. Within twenty days of the conclusion of any hearing, the commissioner shall enter an order pursuant to subsection (c)(1):
 - (A) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer or person limited to the examiner’s workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner’s representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the insurer, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner’s representative shall be under oath and preserved for the record;

- (B) The hearing shall proceed in accordance with departmental rules adopted under chapter 91; and
- (C) Nothing contained in this section shall require the insurance division to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.
- (e) The examination report shall be disseminated as follows:
 - (1) Upon the adoption of the examination report under subsection (c)(1), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of fifteen days, except to the extent provided in subsection (b). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication; and
 - (2) Nothing contained in ~~the insurance~~ this code shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the regulatory agency for insurance of any state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this part.”

SECTION 8. Section 431:3-203.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-203.5 Foreign insurer; certification. (a) Notwithstanding section 431:3-203 or any other law to the contrary in this code, the ~~[insurance]~~ commissioner shall grant a certificate of authority to any applicant, regardless of the number of previous years experience in the business of insurance, that is an insurer licensed under the insurance laws of one of not ~~[less]~~ fewer than three states annually designated, or redesignated, by the ~~[insurance]~~ commissioner from among the states ~~[which]~~ that are accredited by the National Association of Insurance Commissioners. The loss of accreditation by a state designated by the commissioner shall not in itself affect the validity of a previously issued certificate of authority by the commissioner to a foreign insurer licensed under the insurance laws of the previously accredited state. Nor shall the commissioner’s de-selection of a state affect the validity of a previously issued certificate of authority to a foreign insurer licensed by that state. ~~[Each year, after having designated, or redesignated, the accredited states whose insurers shall be authorized to transact insurance in this State, the commissioner shall cause to be given in this State, and in those of the designated states, public notice of the fact that those states have been so designated.]~~

(b) The commissioner may waive the filing of any document required to be submitted under section 431:3-212.

(c) Nothing in this section shall limit the commissioner’s authority to require a foreign insurer to proceed with the certification process under this article if the commissioner, at the commissioner’s discretion, determines that it would be in the public interest.”

SECTION 9. Section 431:3-212.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-212.5 Redomestication of authorized insurers. (a) The certificate of authority, producer appointments and licenses, rates, and other items allowed by

the commissioner, which are in existence at the time an insurer authorized to transact insurance business in this [State] state transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in full force and effect upon such transfer if the insurer remains qualified to transact insurance business in this [State:] state. For purposes of this section, an insurer transferring its corporate domicile to this [State] state remains qualified to transact insurance business in this [State] state if its¹ meets the organization and licensing requirements applicable to the same type of domestic insurer. All outstanding policies of a transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner.

(b) Each transferring insurer shall file new policy forms on or before the effective date of the transfer if such forms are required to be approved by the commissioner. The insurer may use existing policy forms with appropriate endorsements if permitted by, and under such conditions as approved by, the commissioner. Every such transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

(c) The commissioner may apply this section to any domestication occurring in another state by an authorized United States branch of an alien insurer."

SECTION 10. Section 431:3-215, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Six months prior to withdrawing from this [State:] state, an insurer shall file an affidavit with the commissioner showing that:

- (1) It desires to withdraw from this [State] state and to discontinue business in this [State:] state; and
- (2) All of its outstanding policies have been either reinsured or have expired. If the outstanding policies are reinsured, the withdrawing insurer [must] shall also submit the reinsurer's affidavit stating that it has reinsured all the outstanding policies of the withdrawing insurer upon risks in this [State] state or upon business originating in this [State:] state. The reinsurer [must] shall be an insurer authorized to carry on the business of insurance in this [State:] state."

2. By amending subsection (e) to read:

"(e) Six months prior to withdrawing from this [State:] state, an insurer shall, in addition to other requirements, publish in this [State] state a notice of withdrawal once each week for the first eight successive weeks, and again in the last four successive weeks in the sixth month in a newspaper of daily circulation[-]; provided that the commissioner shall have the discretion to waive the notice requirement. The notice of withdrawal as published [must] shall have the prior approval of the commissioner."

SECTION 11. Section 431:3-218, Hawaii Revised Statutes, is amended to read as follows:

"§431:3-218 Procedure upon revocation; suspension of certificate of authority. Upon revoking, suspending, or refusing to extend an insurer's authority to transact insurance, the commissioner shall forthwith:

- (1) Give notice thereof to the insurer not [less] fewer than ten days in advance of the effective date of the revocation or suspension;
- (2) Likewise revoke or suspend all producers' authority to represent the insurer in this [State] state and give notice thereof to the producers; and

- (3) Give notice thereof to the insurance supervisory official of each other state in which the insurer is authorized to transact insurance[-]; provided that notice to the National Association of Insurance Commissioners shall satisfy this requirement.”

SECTION 12. Section 431:3-302.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Annually on or before June 1, or such later date as the commissioner upon request or for cause may specify, each domestic insurer shall file an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and the results of operations of the insurer. The insurer shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit within sixty days[-] of retention. The commissioner may disapprove the insurer’s designation within fifteen days of receipt of the insurer’s notice, and the insurer shall be required to designate another independent certified public accountant or accounting firm.”

2. By amending subsections (c) and (d) to read:

“(c) The audit required in subsection (a) and the audited, consolidated, or combined financial statements ~~[required in]~~ as may be approved under subsection (b) shall be prepared in accordance with the National Association of Insurance Commissioners’ annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners’ accounting practices and procedures manuals.

(d) Any insurer failing or refusing to submit the annual audit or any of the documents required under subsection (a) or as may be approved under subsection (b), on or before June 1, or a later date as the commissioner upon request or for cause may specify, shall be liable for a penalty in an amount not less than \$100 and not more than \$500 for each day of delinquency. The commissioner may suspend or revoke the certificate of authority of any insurer who fails to file any of the documents required in subsection (a).”

SECTION 13. Section 431:3-306, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Reinsurance in ~~[an alien]~~ any reinsurer not qualified under ~~[section 431:3-211]~~ article 4A may not be deducted in determining risk retained for the purposes of this section.”

SECTION 14. Section 431:4-125, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may~~[-, by regulations from time to time,]~~ adopt rules to define and permit additional exceptions to the prohibition in subsection (a), solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer’s business and in the usual private professional or business capacity of such director.”

SECTION 15. Section 431:4-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A domestic stock insurer may decrease its capital stock by:

- (1) Vote of not less than seventy-five per cent of the holders of the shares of stock outstanding and entitled to vote; and

- (2) Filing a certificate executed in the same manner as provided in section ~~[415-58,]~~ 414-11, that such vote occurred, upon which filing the decrease in capital is effective.”

SECTION 16. Section 431:4-247, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:4-247]~~ **Application of this part to annual report.** Notwithstanding section 431:4-238(b) and (c), two copies of any portion of the annual report referred to in section 431:4-238(b), which comments upon or refers to any solicitation subject to this ~~[section]~~ part or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner as proxy material subject to this part. The portion of the annual report shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the annual report are first sent or given to stockholders.”

SECTION 17. Section 431:5-202, Hawaii Revised Statutes, is amended to read as follows:

“**§431:5-202 Assets not allowed.** In addition to assets excluded under section 431:5-201, the following shall not be allowed as assets in any determination of the financial condition of an insurer:

- (1) ~~[Goodwill, trade]~~ Trade names, agency plants, other like intangible assets, and any receivable without adequate documentation[-];
- (2) Positive goodwill from all sources in excess of ten per cent of capital and surplus adjusted to exclude electronic data processing equipment and operating system software and net deferred tax assets;
- ~~[(2)]~~ (3) Prepaid or deferred charges for expenses and commissions paid by the insurer except the unaccrued portion of taxes paid prior to due date, on real property acquired or used pursuant to section 431:6-311[-];
- ~~[(3)]~~ (4) Advances to officers, employees, agents, and other persons on personal security only[-];
- ~~[(4)]~~ (5) Stock of the insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock through the ownership by the insurer of an interest in another firm, corporation or business unit[-];
- ~~[(5)]~~ (6) Furniture, furnishings, fixtures, electronic data software, safes, vehicles, library, stationery, literature, and supplies; except such personal property:
 - (A) The insurer is permitted to hold pursuant to section ~~[431:6-311(d)(5);]~~ 431:6-311(e)(5);
 - (B) Acquired through enforcement of rights arising from security agreements acquired pursuant to section 431:6-310; or
 - (C) Reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes[-]; and
- ~~[(6)]~~ (7) The amount, if any, by which the aggregate book value of investments, as carried in the ledger assets of the insurer, exceeds the aggregate value thereof as determined under this code.”

SECTION 18. Section 431:5-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An insurer may take credit for reserves on risks ceded to a reinsurer to the extent reinsured, except that:

- (1) No credit shall be taken on account of reinsurance in ~~[an alien]~~ any reinsurer not qualified under ~~[section 431:3-211]~~ article 4A or in any reinsurer ~~[which]~~ that has been disapproved by the commissioner~~[-];~~ and
- (2) No credit shall be allowed, as an asset or as a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.”

SECTION 19. Section 431:6-310, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Prior to acquisition of a security agreement, items of property to be included shall be separately appraised by a competent appraiser and the fair market value thereof determined. No such security agreement shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion mortgage loan on the real property.”

SECTION 20. Section 431:6-312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Real property acquired by an insurer pursuant to section ~~[431:6-311(d)(1)]~~ 431:6-311(e)(1) shall be disposed of within three years after it has ceased being necessary for the use of the insurer in the transaction of its business. Real property acquired by an insurer pursuant to such loans, mortgages, liens, judgments, or other debts, or pursuant to ~~[items]~~ paragraphs (2), (3), (4), and (5) of section ~~[431:6-311(d)]~~ 431:6-311(e) shall be disposed of within three years after date of acquisition. The time for any such disposal shall be extended by the commissioner for a definite additional period or periods upon application and reasonable showing that forced sale of the property would be against the best interests of the insurer.”

SECTION 21. Section 431:6-323, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The investments and liabilities of the account shall at all times be clearly identifiable and distinguishable from the other investments and liabilities of the insurer. A sale, transfer, or exchange of investments shall not be made between any of the separate accounts or between any other investment account of the company and one or more of the separate accounts, except for the purpose of:

- (1) Conducting the business of the account in accordance with ~~[subsection (b);]~~ subsections (a) and (c); or
- (2) Making adjustments necessitated by the contract for mortality experience adjustment, and then only if the transfers are made by a transfer of cash or by a transfer of securities having a valuation ~~[which]~~ that can readily be determined in the marketplace. The commissioner may require for domestic life insurers that a transfer of cash or investments from a separate account or accounts to the company be approved in advance of the transfer. The commissioner may prescribe reasonable limitations on charges against and permissible deductions from separate accounts for life insurance contracts on a variable basis.”

SECTION 22. Section 431:6-324, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of this article, a domestic insurer also may do one or more of the following:

- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts ~~[which]~~ that do not exceed the lesser of ten per cent of the insurer’s assets or fifty per cent of the insurer’s surplus as regards policyholders. However, after the investments, the insurer’s surplus as regards policyholders shall be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:
 - (A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary, whether ~~or not~~ represented by the purchase of capital stock or issuance of other securities; and
 - (B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
- (2) If the insurer’s total liabilities, as calculated for National Association of Insurance Commissioners’ annual statement purposes, are less than ten per cent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries. However, after the investment the insurer’s surplus as regards policyholders, considering the investment as if it were a disallowed asset, shall be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs;
- (3) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (1) or in this article applicable to the insurer. For the purpose of this subsection, the total investment of the insurer shall include:
 - (A) Any direct investment by the insurer in an asset; and
 - (B) The insurer’s proportionate share of any investment of an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the insurer’s ownership of the subsidiary;
- (4) With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries~~;~~; provided that after the investment, the insurer’s surplus as regards policyholders~~;~~ shall be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs; or
- (5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to, or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets, which if held directly by the insurer would be considered as a disallowed asset, the insurer’s surplus as regards policyholders shall be reasonable in rela-

tion to the insurer's outstanding liabilities and adequate to its financial needs."

SECTION 23. Section 431:6-601, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of "money market mutual funds" and "obligation" in subsection (a) to read:

"~~["Money market mutual funds"]~~ "Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations ~~[Part]~~ part 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. §80a-1 et seq.), as amended, or renumbered.

"Obligation" means a bond, note, debenture, trust certificate, including equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases and other evidence of indebtedness for the payment of money (or participation, certificates, or other evidence of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment."

2. By amending subsection (e) to read:

"(e) For an investment in an investment pool to be qualified under this section, the manager of the investment pool shall:

- (1) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;
- (2) Be the insurer, an affiliated insurer, or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment ~~[Advisors]~~ Advisers Act of 1940 (15 U.S.C. §80a-1 et seq.), as amended, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;
- (3) Compile and maintain detailed accounting records setting forth:
 - (A) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;
 - (B) A complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any), and other appropriate designations); and
 - (C) Other records ~~[which,]~~ that on a daily basis, allow third parties to verify each participant's investment in the investment pool; and
- (4) Maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:
 - (A) State and recognize the claims and rights of each participant;
 - (B) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and
 - (C) Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person."

SECTION 24. Section 431:7-101, Hawaii Revised Statutes, is amended to read as follows:

“§431:7-101 Fees. (a) The commissioner shall collect in advance the following fees:

- (1) Certificate of authority: Issuance \$900
- (2) Organization of domestic insurers and affiliated corporations:
 - (A) Application and all other papers required for issuance of solicitation permit, filing \$1,500
 - (B) Issuance of solicitation permit \$150
- (3) Producer's license:
 - (A) Issuance, regular license [75] \$50
 - (B) Issuance, temporary license [75] \$50
- (4) Nonresident producer's license: Issuance \$75
- (5) Independent adjuster's license: Issuance \$75
- (6) Public adjuster's license: Issuance \$75
- (7) Workers' compensation claim adjuster's limited license: Issuance ... \$75
- (8) Independent bill reviewer's license: Issuance \$80
- (9) Limited producer's license: Issuance \$60
- (10) Managing general agent's license: Issuance \$75
- (11) Reinsurance intermediary's license: Issuance \$75
- (12) Surplus ~~line~~ lines broker's license: Issuance \$150
- (13) Service contract provider's registration: Issuance \$75
- (14) Approved course provider certificate: Issuance \$100
- (15) Approved continuing education course certificate: Issuance \$30
- (16) Vehicle protection product warrantor's registration: Issuance \$75
- (17) Criminal history record check \$20
- [(47)] (18) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) [75] \$50 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$45 per year for all services (including extension of the license) for a ~~regularly limited licensed~~ workers' compensation claims ~~adjuster;~~ adjuster's limited license;
- (7) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$45 per year for all services (including extension of the license) for a producer's limited license;
- (9) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$45 per year for all services (including extension of the license) for a licensed surplus ~~line~~ lines broker;
- (12) \$75 per year for all services (including renewal of registration) for a service contract provider;

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- (13) \$65 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$20 per year for all services (including extension of the certificate) for an approved continuing education course; ~~and~~
- (15) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor[-]; and
- (16) \$20 for a criminal history record check.

The services referred to in paragraphs (1) to ~~[(15)]~~ (16) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.

(c) The commissioner shall notify the holder of a certificate of authority issued under article 3[, or a license or other certificate issued under article 9 or 9A,] by written notice at least thirty days prior to the extension date of the certificate of authority, license, or other certificate. If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within the thirty days immediately following the extension date, the commissioner may revoke, suspend, or inactivate the certificate of authority, license, or other certificate, and shall not reissue, remove the suspension of, or reactivate the certificate of authority, license, or other certificate until the fee and penalty have been paid.

(d) Failure to pay the fee before or on the extension date for a license or other certificate issued under article 9 or 9A shall cause the automatic inactivation of the license or certificate effective as of the extension date.

~~[(d)]~~ (e) All fees and penalties shall be deposited to the credit of the compliance resolution fund.”

SECTION 25. Section 431:8-208, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Nothing in subsection (a) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service made in the manner provided in section 431:8-207 on the ground that ~~[such] the~~ unauthorized insurer has not ~~[done any of the acts enumerated in section 431:8-102(d)-]~~ transacted any insurance business in this state.”

SECTION 26. Section 431:8-310, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Corporations, including foreign corporations, shall be eligible to be ~~[resident]~~ surplus lines brokers, upon the following conditions:

- (1) The corporate licensee shall list individuals within the corporation who have satisfied all requirements of this part to become surplus lines brokers; and
- (2) Only those individuals listed on the corporate license shall transact surplus lines business.”

SECTION 27. Section 431:9-222.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~**§431:9-222.5[3] Workers’ compensation claims adjusters; limited license.** (a) The commissioner may issue a limited license to an adjuster who only adjusts workers’ compensation claims; provided that the adjuster:

- (1) Is domiciled in the State of Hawaii, or in a state that permits residents of the State of Hawaii to act as adjusters in that other state;

- (2) Has had experience, special education, or training in handling loss claims under workers' compensation insurance contracts of sufficiently reasonable duration and extent to enable an individual to fulfill the responsibilities of an adjuster;
 - (3) Has a passing grade on the workers' compensation examination pursuant to section 431:9-206; and
 - (4) Pays the applicable fees.
- (b) An adjuster with a limited license issued under this [{}section{}] may extend the license biennially upon successfully passing a reexamination on workers' compensation."

SECTION 28. Section 431:9A-107, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) An insurance producer who allows the producer's license to [lapse, within twenty-four months from the due date of the renewal fee, may reinstate that license without the necessity of passing a written examination. If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee.] become inactive for nonpayment of the renewal fee may reinstate that license without the necessity of passing a written examination, if the fee payable and a penalty in the amount of fifty per cent of then unpaid fees are paid within twenty-four months from the inactivation date and the producer is in compliance with all requirements of chapter 431. If the license is not reinstated within the twenty-four-month period, the license shall automatically expire."

SECTION 29. Section 431:9B-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person, firm, association, or corporation shall act as a reinsurance intermediary-broker in this [State] state if the reinsurance intermediary-broker maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation:

- (1) In this [State,] state, unless the reinsurance intermediary-broker is a licensed agent in this [State,] state; or
- (2) In another state, unless the reinsurance intermediary-broker is a licensed agent in this [State] state or another state having a law substantially similar to this law, or such reinsurance intermediary-broker is licensed in this [State] state as a nonresident reinsurance intermediary."

SECTION 30. Section 431:10A-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A policy of accident and health or sickness insurance shall neither be delivered nor issued for delivery to any person in this [State] state unless:

- (1) The entire monetary and other considerations are expressed in the policy;
- (2) The time at which the insurance takes effect and terminates is expressed in or determinable from the policy;
- (3) It purports to insure only one person, except that a policy may provide family coverage as defined in section 431:10A-103 or reciprocal beneficiary family coverage as defined in section 431:10A-601;
- (4) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten point with a lower

case unspaced alphabet length not less than one hundred twenty point. The text shall include all printed matter except the name and address of the insurer, name or title of the policy, a brief description, if any, and captions and subcaptions;

- (5) The exceptions and reductions of indemnity are set forth in the policy and, except for the required and optional provisions set forth in [section] sections 431:10A-105 and [section] 431:10A-106, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as exceptions, or exceptions and reductions; provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction shall be included with the benefit provision to which it applies;
- (6) Each policy form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page; and
- (7) It does not contain any provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner."

SECTION 31. Section 431:10A-105, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-105 Required provisions. Except as provided in section 431:10A-107, each policy of accident and health or sickness insurance delivered or issued for delivery to any person in this [State] state shall contain the provisions set forth below. These provisions shall be in the words in which they appear below[;]; provided that the insurer may substitute corresponding provisions of different wording approved by the commissioner [which] that are in each instance not less favorable in any respect to the insured or the beneficiary. The provisions shall be preceded individually by the specified caption, or by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

- (1) "Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions."
- (2) (A) "Time Limit on Certain Defenses:
 - (i) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for this policy shall be used to void this policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of the three-year period.
 - (ii) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had

existed prior to the effective date of coverage of this policy.”

- (B) The policy provision set forth in subparagraph (A)(i) shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of section 431:10A-106(1) through (4) in the event of misstatement with respect to age or occupation or other insurance.
 - (C) A policy [which] that the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of subparagraph (A)(i) the following provision (from which the clause in parentheses may be omitted at the insurer’s option): “Incontestable: After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.”
- (3) (A) “Grace period: A grace period of [days] (insert a number not less than seven for weekly premium policies, ten for monthly premium policies, and thirty-one for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.”
- (B) A policy [which] that contains a cancellation provision may add at the end of the above provision: “subject to the right of the insurer to cancel in accordance with the cancellation provision.”
 - (C) A policy in which the insurer reserves the right to refuse any renewal shall have at the beginning of the above provision: “Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured’s last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.”
- (4) (A) “Reinstatement: If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided that if the insurer or agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of the application by the insurer or, lacking approval, upon the forty-fifth day following the date of conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from accidental injury as may be sustained after the date of reinstatement and loss due to sickness as may begin more than ten days after that date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with the reinstatement shall be applied to a

- period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.”
- (B) The last sentence ~~[of the above provision]~~ in subparagraph (A) may be omitted from any policy ~~[which]~~ that the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.
- (5) (A) “Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of the office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.”
 - (B) In a policy providing a loss of time benefit ~~[which]~~ that may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences ~~[of the above provision:]~~ in subparagraph (A): “Subject to the qualification set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of the claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in giving notice shall not impair the insured’s right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which notice is actually given.”
- (6) “Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant the forms, that are usually furnished by it for filing proofs of loss. If the forms are not furnished within fifteen days after the giving of notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made.”
 - (7) “Proofs of Loss: In case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, written proof of loss must be furnished to the insurer at its office within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of loss. Failure to furnish proof of loss within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within the time required, provided proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than fifteen months from the time proof is otherwise required.”
 - (8) “Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic

payment will be paid immediately upon receipt of due written proof of loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

- (9) (A) "Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting payment which may be prescribed herein and effective at the time of payment. If no designation or provision is then effective, the indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to the designated beneficiary or to the estate of the insured. All other indemnities will be payable to the insured."
- (B) The following provisions, or either of them, may be included with ~~[the above provision]~~ the provision set forth in subparagraph (A) at the option of the insurer:
 - (i) "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay the indemnity, up to an amount not exceeding \$2,000 to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of the payment."
 - (ii) "Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of loss, be paid directly to the hospital or person rendering the services; but it is not required that the service be rendered by a particular hospital or person."
- (10) "Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."
- (11) "Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No action at law or in equity shall be brought after the expiration of three years after the time written proof of loss is required to be furnished."
- (12) (A) "Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

- (B) The first clause of [~~the above provision,~~] subparagraph (A), relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option."

SECTION 32. Section 431:10A-106, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-106 Optional provisions. Except as provided in section 431:10A-107, no policy of accident and health or sickness insurance delivered or issued for delivery to any person in this [State] state shall contain the provisions set forth below unless the provisions are in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording approved by the commissioner [~~which~~] that are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions are optional provisions. Any such provision contained in the policy shall be preceded individually by the specified caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

- (1) "Change of Occupation: If the insured is injured or contracts sickness after having changed occupations to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured's occupation changes to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."
- (2) "Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."
- (3) Other insurance in this insurer shall be in one of the following forms:
 - (A) "Other Insurance in This Insurer: If an accident and health or sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to the insured's estate."; or
 - (B) "Other Insurance in This Insurer: Insurance effective at any one time on the insured under a like policy or policies in this insurer

is limited to the one such policy elected by the insured, the insured's beneficiary, or the insured's estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

- (4) Insurance with other insurers. Either or both of the following forms shall be used:
 - (A) (i) "Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."
 - (ii) "Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all the indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."
- (B) If the provision set forth in subparagraph (A)(i) is included in a policy ~~[which]~~ that also contains the provision set forth in subparagraph (A)(ii), there shall be added to the caption of the subparagraph (A)(i) provision the phrase, "expense incurred benefits".
- (C) The insurer may, at its option, include in the provision set forth in subparagraph (A)(i) a definition of other valid coverage, approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this State or any other state or territory of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition the term shall not include group insurance, automobile medical payment insurance, or coverage provided by hospital or medical service organizations ~~[or by]~~, union welfare plans, or

employer or employee benefit organizations. For the purpose of applying the provision set forth in subparagraph (A)(i) with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in subparagraph (A)(i), no third party liability coverage shall be included as other valid coverage.

- (D) If the provision set forth in subparagraph (A)(ii) is included in a policy ~~[which]~~ that also contains the provision set forth in subparagraph (A)(i), there shall be added to the caption of the subparagraph (A)(ii) provision the phrase, "other benefits".
 - (E) The insurer may, at its option, include in the provision set forth in subparagraph (A)(ii) a definition of other valid coverage, approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this State or any other state or territory of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition the term shall not include group insurance, or benefits provided by union welfare plans or employer or employee benefit organizations. For the purpose of applying the provision set forth in subparagraph (A)(ii) with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in subparagraph (A)(ii), no third party liability coverage shall be included as other valid coverage.
- (5) (A) "Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time."

- (B) The ~~[above]~~ policy provision in subparagraph (A) may be inserted only in a policy which the insured has the right to continue in force, subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.
- (C) The insurer may, at its option, include in the provision set forth in subparagraph ~~[(B)] (A)~~ a definition of valid loss of time coverage approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this State or any state, district, or territory of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such terms shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.
- (6) "Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom."
- (7) "Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation."
- (8) "Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."
- (9) "Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."
- (10) "Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.""

SECTION 33. Section 431:10A-117, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-117 Franchise plan. ~~[The term employees as used in this section shall include the]~~ (a) As used in this section, “employees” include:

- (1) The officers, managers, and employees of the employer~~[, and the];~~ and
- (2) ~~The individual proprietor or partners, if the employer is an individual proprietor or partnership.~~

(b) Insurance may be issued pursuant to this part on a franchise plan under the terms of which accident and health or sickness insurance is issued to:

- (1) Five or more employees of any corporation, co-partnership, or individual employer, or any governmental corporation, agency, or department thereof; or
- (2) Ten or more members, employees, or employees of members of any trade or professional association, of a labor union, or of any other association having had an active existence for at least two years; provided~~[:]~~ that:
 - (A) Such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance;
 - (B) Such persons, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for; and
 - (C) There is ~~[under]~~ an arrangement whereby the premiums on the policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association for its members, or by some designated person acting on behalf of the employer or association.”

SECTION 34. Section 431:10A-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding ~~[anything]~~ any provision in this part to the contrary ~~[contained in this part]~~, this part shall apply to:

- (1) All medicare supplement policies delivered or issued for delivery in this ~~[State on or after the effective date hereof;]~~ state; and
- (2) All certificates issued under group medicare supplement policies, which certificates have been delivered or issued for delivery in this ~~[State:]~~ state.”

SECTION 35. Section 431:10A-309, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) No medicare supplement policy or certificate shall be delivered or issued for delivery in this ~~[State]~~ state after the date specified in rules adopted by the commissioner unless the form of ~~[such]~~ the policy or certificate is approved in accordance with this section.”

2. By amending subsection (e) to read:

“(e) A policy or certificate shall be deemed approved if:

- (1) It is in accordance with all applicable laws and rules;
- (2) It has not been disapproved earlier than sixty-one days after the date of ~~[filings;]~~ filing;
- (3) It fully meets all filing requirements; and
- (4) It is received by the commissioner.”

SECTION 36. Section 431:10A-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the commissioner finds the advertisement to be in violation of any provision of this chapter or any rule, the commissioner shall order the issuer to cease and desist use of the advertisement pursuant to section [431:2-201 and section 431:2-202.] 431:2-203.”

SECTION 37. Section 431:10A-601, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) As used in this section, ~~[reciprocal beneficiary family coverage]~~ “reciprocal beneficiary family coverage” means a policy that insures, originally or upon subsequent amendment, a reciprocal beneficiary who shall be deemed the policyholder, the other party to the policyholder’s reciprocal beneficiary relationship registered pursuant to chapter 572C, and dependent children or any child of any other person dependent upon either reciprocal beneficiary.”

SECTION 38. Section 431:10B-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner, within the waiting period or any extension thereof after the filing of the policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders and premium rates, shall disapprove any form or any premium rates if:

- (1) The benefits provided are not reasonable in relation to the premium charge; or
- (2) The form contains provisions ~~[which]~~ that are ~~[unjust]~~:
 - (A) Unjust, unfair, inequitable, misleading, or deceptive~~[-, or encourage]~~;
 - (B) Encourage misrepresentation of the coverage~~[-];~~ or [are]
 - (C) Are contrary to any provision of ~~[the]~~ this code or of any rule adopted thereunder.”

SECTION 39. Section 431:10C-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The motor vehicle insurance required by section 431:10C-104 may be satisfied by any owner of a motor vehicle if:

- (1) The owner ~~[provides a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under a motor vehicle insurance policy, providing coverage at all times for the entire motor vehicle registration period, as determined and approved by the commissioner under rules;]~~ meets the requirements of part VI of this article; and
- (2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against the owner as the claimant would have had if a motor vehicle insurance policy had been applicable to the vehicle.”

SECTION 40. Section 431:10C-111, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An insurer may not cancel or refuse to renew a motor vehicle insurance policy, including required optional additional insurance ~~[meeting]~~ under section 431:10C-302, once issued except when:

- (1) The license of the principal operator to operate the type of motor vehicle is suspended or revoked;
- (2) Premium payments for the policy are not made after reasonable demand therefor; or

- (3) The nonrenewal or conditional renewal is limited in accordance with section 431:10C-111.5.”

SECTION 41. Section 431:10C-119, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner ~~[may,]~~ shall, prior to issuing a certificate of self-insurance to any person, require the applicant to provide for a complete claims service office and an officer for the purpose of service of process in this ~~[State.]~~ state.”

SECTION 42. Section 431:10C-602, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“~~[[§431:10C-602[]]~~ Surety bond[,] or deposit of security[, or]; proof of financial ability.”

SECTION 43. Section 431:10D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any of the provisions or portions of ~~[items]~~ paragraphs (1) through (9) not applicable to single premium policies shall to that extent not be incorporated therein. This section shall not apply to ~~[any]~~:

- (1) Any provision of a life insurance policy relating to disability benefits ~~[or to additional];~~
- (2) Additional benefits in the event of death by accident or accidental means~~[-, nor to annuities and pure];~~
- (3) Annuities; or
- (4) Pure endowment contracts.”

SECTION 44. Section 431:10D-103, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

- “(e) The life insurer shall:
- (1) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;
 - (2) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in ~~[item]~~ paragraph (3); and
 - (3) Send to policyholders with loans reasonable advance notice of any increase in the rate.”

SECTION 45. Section 431:10D-104, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Cash surrender value - life:

- (1) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection (b), shall be an amount not less than the excess, if any, of the present value, on the anniversary, of the future guaranteed benefits ~~[which]~~ that would have been provided for by the policy including any existing paid-up additions, if there had been no default, over the sum of:

- (A) The then present value of the adjusted premiums as defined in subsection (e) corresponding to premiums ~~[which]~~ that would have fallen due on and after the anniversary~~[-];~~ and
 - (B) The amount of any indebtedness to the insurer on account of or secured by the policy~~[-; Provided that for];~~ provided that:
 - (i) ~~For~~ any policy issued on or after the operative date of subsection (e)(8) ~~[as defined therein, which]~~ that provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in ~~[item (1)]~~ this paragraph shall be an amount not less than the sum of the cash surrender value ~~[as defined in such paragraph]~~ for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value ~~[as defined in such paragraph]~~ for a policy ~~[which]~~ that provides only the benefits otherwise provided by such rider or supplemental policy provision~~[-]; and~~
 - (ii) ~~[Provided further that for]~~ For any family policy issued on or after the operative date of subsection (e)(8) ~~[as defined therein, which]~~ that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's ~~[age seventy-one,]~~ seventy-first birthday, the cash surrender value referred to in ~~[item (1)]~~ this paragraph shall be an amount not less than the sum of the cash surrender value ~~[as defined in such paragraph]~~ for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value ~~[as defined in such paragraph]~~ for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value ~~[as defined in such paragraph]~~² ~~[for]~~ a policy ~~[which]~~ that provides only the benefits otherwise provided by such term insurance on the life of the spouse.
 - (2) Any cash surrender value available within thirty days after any policy anniversary, of the future guaranteed benefits provided for by the policy including any existing paid-up additions, shall be decreased by any indebtedness to the insurer on account of or secured by the policy."
2. By amending subsections (e) through (g) to read:
- "(e) The adjusted premium - life:
- (1) This paragraph shall not apply to policies issued on or after the operative date of ~~[item]~~ paragraph (8) as defined therein. Except as provided in ~~[subsection (e)(4);]~~ paragraph (4), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:
 - (A) The then present value of the future guaranteed benefits provided for by the policy;
 - (B) Two per cent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;

- (C) Forty per cent of the adjusted premium for the first policy year; and
 - (D) Twenty-five per cent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.
- (2) This paragraph shall not apply to policies issued on or after the operative date of [item] paragraph (8) [as described therein]. ~~Provided that in.~~ In applying the percentages specified in [[subparagraphs] (C)] paragraph (1)(C) and (D), no adjusted premium shall be deemed to exceed four per cent of the amount of insurance or uniform amount equivalent thereto. Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy.
- (3) This paragraph shall not apply to policies issued on or after the operative date of [item] paragraph (8) [as described therein]. In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this paragraph shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy~~[-; provided that in]~~. In the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten was the amount provided by the policy at age ten.
- (4) This paragraph shall not apply to policies issued on or after the operative date of [item] paragraph (8) [as described therein]. The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by the adjusted premiums for the term insurance.
- The foregoing ~~[(A)] amounts in paragraph (1)(A)~~ and (B) being calculated separately and as specified in ~~[subsection (e)(1),]~~ paragraphs (1), (2), and (3), except that for the purposes of [subsection (e)(1)(B),] paragraph (1)(B), (C), and (D), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in [(B)] paragraph (1)(B) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in [(A)] paragraph (1)(A).
- (5) This paragraph shall not apply to policies issued on or after the operative date of [item] paragraph (8) [as described therein]. Except as otherwise provided in [items] paragraphs (6) and (7) [of subsection (e)], all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of

the Commissioners 1941 Standard Ordinary Mortality Table^[5]; provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent a year, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. ~~Provided that in~~

In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent of the rates of mortality according to the applicable table. ~~Provided further that for~~

For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

- (6) This paragraph shall not apply to ordinary policies issued on or after the operative date of ~~item~~ paragraph (8) ~~[as defined therein]~~. In the case of ordinary policies issued on or after the operative date of this paragraph ~~[as defined herein]~~, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table ~~[and the]~~.

The rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits~~[- provided that such rate of interest]~~ shall not exceed three and one-half per cent a year, except that ~~[a]~~:

- (A) A rate of interest not exceeding four per cent a year may be used for policies issued after June 1, 1976, and prior to June 1, 1979~~[- and a]~~;
- (B) A rate of interest not exceeding five and one-half per cent a year may be used for policies issued on or after June 1, 1979~~[- except that for]~~; and
- (C) For any single premium whole life or endowment insurance policy, a rate of interest not exceeding six and one-half per cent a year may be used~~[- and provided further that for]~~.

For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured~~[- provided that in]~~.

In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table~~[- provided further that for]~~.

For insurance issued on a substandard basis, the calculation of any ~~[such]~~ adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

After June 1, 1959, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this ~~item~~ (6) paragraph after a specified date before January 1, 1966. After the

filing of such notice, then upon such specified date (which shall be the operative date of this ~~[item (6)]~~ paragraph for such insurer), this ~~(6)~~ paragraph shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this ~~[item (6)]~~ paragraph for such insurer shall be January 1, 1966.

- (7) This paragraph shall not apply to industrial policies issued on or after the operative date of ~~[item]~~ paragraph (8) ~~[as defined therein]~~. In the case of industrial policies issued on or after the operative date of this paragraph ~~[as defined herein]~~, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table ~~[and the]~~.

The rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits~~[- provided that such rate of interest]~~ shall not exceed three and one-half per cent a year, except that [a]:

- (A) A rate of interest not exceeding four per cent a year may be used for policies issued on or after June 1, 1976, and prior to June 1, 1979~~[- and a];~~
- (B) A rate of interest not exceeding five and one-half per cent a year may be used for policies issued on or after June 1, 1979~~[- except that for]; and~~
- (C) For any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent a year may be used~~[- provided further that in]~~.

In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table~~[- provided further that for]~~.

For insurance issued on a substandard basis, the calculation of any ~~[such]~~ adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

After May 8, 1965, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this paragraph for such insurer), this paragraph shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this paragraph for such insurer shall be January 1, 1968.

- (8) (A) This paragraph shall apply to all policies issued on or after the operative date of this paragraph ~~[as defined herein]~~. Except as provided in ~~[subparagraph] (F);~~ (G), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture

benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

- (i) The then present value of the future guaranteed benefits provided for by the policy;
- (ii) One per cent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
- (iii) One hundred twenty-five per cent of the nonforfeiture net level premium as hereinafter defined.

~~[Provided that in]~~ In applying the percentage specified in clause (iii), no nonforfeiture net level premium shall be deemed to exceed four per cent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of ~~[item (8)]~~ this paragraph shall be the date as of which the rated age of the insured is determined.

~~[(A)]~~ (B) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

~~[(B)]~~ (C) In the case of policies ~~[which]~~ that cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or ~~[which]~~ that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy immediately after the change. At the time of any such change in the benefit or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

~~[(C)]~~ (D) Except as otherwise provided in ~~[subparagraph (F)]~~, (G), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of the sum of:

- (i) The then present value of the then future guaranteed benefits provided for by the policy; and
- (ii) The additional expense allowance, if any, over the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

- [~~(D)~~] (E) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:
- (i) One per cent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and
 - (ii) One hundred twenty-five per cent of the increase, if positive, in the nonforfeiture net level premium.
- [~~(E)~~] (F) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing the value defined in clause (i) by the value defined in clause (ii):
- (i) The nonforfeiture net level premium applicable prior to the charge times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the charges on which a premium would have fallen due had the change not occurred, plus the present value of the increase in future guaranteed benefits provided for by the policy~~[-]; and~~
 - (ii) The present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of charge on which a premium falls due.
- [~~(F)~~] (G) Notwithstanding any other ~~[provisions]~~ provision of this paragraph to the contrary, in the case of a policy issued on a substandard basis ~~[which]~~ that provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis ~~[which]~~ that provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.
- [~~(G)~~] (H) All adjusted premiums and present values referred to in this section shall: for all policies of ordinary insurance be calculated on the basis of either the Commissioners 1980 Standard Ordinary Mortality Table, or at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; ~~[shall]~~ for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and ~~[shall]~~ for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this paragraph for ~~[policies]~~ policies issued in that calendar year~~[-]~~ Provided; provided that:
- (i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding nonforfeiture interest rate, ~~[as defined in this paragraph,]~~ for policies issued in the immediately preceding calendar year~~[-];~~
 - (ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (b), shall be

- calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any[-];
- (iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values[-];
 - (iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance[-];
 - (v) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables[-];
 - (vi) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by ~~[regulation promulgated]~~ rule by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table[-]; and
 - (vii) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by ~~[regulation promulgated]~~ rule by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.
- ~~[(H)]~~ (I) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five per cent of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one quarter of one per cent.
- ~~[(H)]~~ (J) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form ~~[which]~~ that involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.
- ~~[(J)]~~ (K) After the effective date of this ~~[item (8)]~~ paragraph, any company may file with the commissioner a written notice of its election to comply with ~~[the provisions of]~~ this paragraph after a specified date before January 1, 1989, which shall be the operative date of this paragraph for such company. If a company makes no such election, the operative date of this paragraph for such company shall be January 1, 1989.

~~[(K)]~~ (L) In the case of any plan of life insurance ~~[which]~~ that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance ~~[which]~~ that is of such a nature that minimum values cannot be determined by the methods described in subsections (b), (c), (d), and (e), then:

- (i) The commissioner ~~[must]~~ shall be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections (b), (c), (d), and (e);
- (ii) The commissioner ~~[must]~~ shall be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and
- (iii) The cash surrender values and paid-up nonforfeiture benefits provided by such plan ~~[must]~~ shall not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by ~~[regulations promulgated]~~ rules adopted by the commissioner.

(f) Calculation of values - life: Any cash surrender value and any paid-up value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (c), (d), and (e) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding subsection (c), additional benefits payable:

- (1) In the event of death or dismemberment by accident or accidental means;
- (2) In the event of total and permanent disability;
- (3) As reversionary annuity or deferred reversionary annuity benefits;
- (4) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply;
- (5) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child; and
- (6) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, ~~[shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.]~~

shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(g) This subsection, in addition to all other applicable subsections of this section, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium

payment due on any policy anniversary shall be in an amount ~~[which]~~ that does not differ by more than two-tenths of one per cent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of the greater of zero and the basic cash value hereinafter specified, and the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits ~~[which]~~ that would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums ~~[which]~~ that would have fallen due on and after such anniversary. ~~[Provided that the]~~ The effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (c) or (e)(1), (2), (3), (4), and (5), whichever is applicable, shall be the same as are the effects specified in subsection (c) or (e)(1), (2), (3), (4), and (5), whichever is applicable, on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection (e)(1), (2), (3), (4), and (5) or subsection (e)(8), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

- (1) ~~[Must]~~ Shall be the same for each policy year between the second policy anniversary and the later of:
 - (A) The fifth policy anniversary~~[-]~~; and
 - (B) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one per cent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
- (2) ~~[Must]~~ Shall be such that no percentage after the later of the two policy anniversaries specified in ~~[item]~~ paragraph (1) may apply to fewer than five consecutive policy years.

~~[Provided, that no]~~ No basic cash value may be less than the value ~~[which]~~ that would be obtained if the adjusted premiums for the policy, as defined in subsection (e)(1), (2), (3), (4), and (5) or subsection (e)(8), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (b), (c), (d), (e)(8), and (f). The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as ~~[items]~~ paragraphs (1) through (6) in subsection (f) shall conform with the principles of this subsection."

SECTION 46. Section 431:10D-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No annuity or pure endowment contract shall be delivered or issued for delivery in this [State] state unless it contains in substance each of the provisions set forth below:

- (1) Grace period. There shall be a grace period of not [~~less~~] fewer than thirty days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer, to an interest charge at a rate to be specified in the contract, but not exceeding six per cent a year, for the number of days elapsing before such payment, during which period of grace the contract shall continue in full force. However, if a claim arises under the contract on account of death prior to the expiration of the grace period and before the overdue payment to the insurer of the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.
- (2) Incontestability. If any statements, other than those relating to age, sex, and identity, are required as a condition to issuing an annuity or pure endowment contract, subject to [~~item~~] paragraph (4), the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two years from its date of issue, except for nonpayment of stipulated payments to the insurer. At the option of the insurer, the contract may also except any provisions relative to benefits in the event of disability and any provisions [~~which~~] that grant insurance specifically against death by accident or accidental means.
- (3) Entire contract. The contract shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.
- (4) Misstatement of age or sex. If the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefit accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer makes or has made any overpayment on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six per cent a year, may be charged against the current or next succeeding payment to be made by the insurer under the contract.
- (5) Dividends. In participating contracts the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract except that at the option of the insurer the participation may be deferred to the end of the third contract year.
- (6) Reinstatement. The contract may be reinstated at any time within one year from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated, with interest thereon at a rate to be specified in the contract but not exceeding six per cent a year compounded annually. In cases where applicable, the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.”

SECTION 47. Section 431:10D-202, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Issuance of group life insurance policies shall be subject to the following requirements:

- (1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term employees shall include:
 - (A) The employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietorships, or partnerships, if the business of the employer and of such affiliated corporations, proprietorships, or partnerships is under common control;
 - (B) The individual proprietor or partners, if the employer is an individual proprietor or a partnership; and
 - (C) Retired employees.

No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless the individual is actively engaged in and devotes a substantial part of the individual's time to the conduct of the business of the proprietorship or partnership[-];

- (2) The premium for the policy shall be paid either:
 - (A) Wholly from the employer's fund or funds contributed by the employer[-]; or
 - (B) Partly from such funds and partly from funds contributed by the insured employees.

No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds provided in accordance with ~~item (2)(B)~~ subparagraph (B) may be placed in force only if at least seventy-five per cent of the then eligible employees, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. Except as provided in ~~item~~ paragraph (3), a policy on which no part of the premium is to be derived from funds contributed by the insured employees ~~must~~ shall insure all eligible employees, except those who reject such coverage in writing[-];

- (3) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (4) The policy ~~must~~ shall cover at least ten employees at date of issue[-]; and
- (5) The amounts of insurance under the policy ~~must~~ shall be based upon some plan precluding individual selection either by the employees ~~or by the~~, employer, or trustees.”

SECTION 48. Section 431:10D-203, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-203 Debtor groups.** The lives of a group of individuals may be insured under a policy issued to a creditor or its parent holding company or to a trustee or trustees or agent designated by two or more creditors, which creditor, holding company, affiliate, trustee, trustees, or agent shall be deemed the policy-

holder, to insure debtors of the creditor or creditors, subject to the following requirements:

- (1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or creditors or all of any class or classes thereof. The policy may provide that the term debtors shall include:
 - (A) Borrowers of money or purchasers or lessees of goods, services, or property for which payment is arranged through a credit transaction;
 - (B) The debtors of one or more subsidiary corporations; and
 - (C) The debtors of one or more affiliated corporations, proprietorships, or partnerships, if the business of the policyholder and the affiliate is under common control[-];
- (2) The premiums for the policy shall be paid either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premiums is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible from insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five per cent of the then eligible debtors elect to pay the required charges. Except as provided in [item] paragraph (3), a policy on which no part of the premium is to be derived from the collection of such identifiable charges [must] shall insure all eligible debtors[-];
- (3) An insurer may exclude any debtors as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (4) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five per cent of the new entrants become insured[-];
- (5) The amount of the insurance on the life of any debtor shall at no time exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor, except that if the sole purpose of the loan is to provide future advances to the debtor to meet education or education-related expenses of the debtor, the debtor's spouse, children or other dependents, the amount of insurance may equal, but may not exceed, the total amount of the described expenses forecast at the time of entry into the loan agreement with the creditor, less the amount of all repayments by the debtor. In the case of revolving loan or revolving charge accounts, the insurance shall at no time exceed the unpaid indebtedness[-];
- (6) The insurance shall be payable to the creditor or any successor to the right, title, and interest of the creditor. The payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of the payment and, whenever the amount of insurance exceeds the unpaid indebtedness, any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate[-]; and
- (7) Payment by the debtor insured under any such group life insurance contract of an amount not in excess of the premium charged the creditor by the insurer for such insurance pertaining to the debtor, shall not be deemed to constitute a charge upon a loan in violation of any banking or usury law or any law regulating installment sales."

SECTION 49. Section 431:10D-204, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-204 Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of the union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

- (1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof;
- (2) The premium for the policy shall be paid either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five per cent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. Except as provided in [item] paragraph (3), a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance [must] shall insure all eligible members, except those who reject such coverage in writing[-];
- (3) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (4) The policy [must] shall cover at least twenty-five members at date of issue[-]; and
- (5) The amount of insurance under the policy [must] shall be based upon some plan precluding individual selection either by the members or by the union.”

SECTION 50. Section 431:10D-207, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-207 Public employee association groups. The lives of a group of individuals may be insured under a policy issued to an association of public employees, which shall be deemed the policyholder, to insure members of the association for the benefit of persons other than the association or any of its officials, subject to the following requirements:

- (1) The association [must] shall have been formed for purposes other than obtaining insurance and have when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five per cent of the number of employees eligible for membership in such classes[-];
- (2) The members eligible for insurance under the policy shall be all of the members of the association, or all of any class or classes thereof[-];
- (3) The premium for the policy shall be paid either from the association's own funds or from charges collected from the insured members specifically for the insurance, or from both. Any charges collected from the insured members specifically for the insurance, and the dues of the association if they include the cost of insurance, may be collected through deductions by the employer from the salaries of the members.

The deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five per cent of the then eligible members of the association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make the required deductions from salary, or have otherwise assigned pay or arranged for payment of their individual contributions to the association. Except as provided in ~~[item]~~ paragraph (4), a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance ~~[must]~~ shall insure all eligible members, except those who reject such coverage in writing[-];

- (4) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (5) Charges collected from the insured members specifically for the insurance, and the dues of the association if they include the cost of insurance, may be determined according to each attained age or in not ~~[less]~~ fewer than four reasonably spaced attained age groups. This provision, however, shall not preclude an average rate for the whole group with charges to the individual members based on a schedule of insurance graded by rank, salary bracket, or by length of service or seniority[-];
- (6) The policy ~~[must]~~ shall cover at least twenty-five persons at date of issue[-]; and
- (7) The amounts of insurance under the policy ~~[must]~~ shall be based upon some plan precluding individual selection either by the members or by the association.

~~[(8)]~~ As used ~~[herein, public employees means]~~ in this section, “public employees” means employees of the United States government, ~~[or of]~~ any state, ~~[or of]~~ any political subdivision ~~[or]~~, instrumentality ~~[or]~~, department ~~[or]~~, bureau ~~[or]~~, board, or commission of ~~[any of them,]~~ the United States government or any state, or the national guard as an association in nature under its existing form.”

SECTION 51. Section 431:10D-209, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-209 Professional association groups. The lives of a group of individuals may be insured under a policy issued to an association of professional persons, which shall be deemed the policyholder, to insure members of the association for the benefit of persons other than the association or any of its officials, subject to the following requirements:

- (1) The association ~~[must]~~ shall have been formed for purposes other than obtaining insurance and have when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five per cent of the number of professional persons eligible for membership in such classes[-];
- (2) The members eligible for insurance under the policy shall be all of the members of the association, or all of any class or classes thereof[-];
- (3) The premium for the policy shall be paid either from the association’s own funds or from charges collected from the insured members specifically for the insurance, or from both. No policy may be placed in force unless and until at least seventy-five per cent of the then eligible members of the association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to

be covered and have arranged for payment of their individual contributions to the association. Except as provided in ~~[item]~~ paragraph (4), a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance ~~[must]~~ shall insure all eligible members[-];

- (4) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (5) Charges collected from the insured members specifically for the insurance, and the dues of the association if they include the cost of insurance, may be determined according to each attained age or in not ~~[less]~~ fewer than four reasonably spaced attained age groups[-];
- (6) The policy ~~[must]~~ shall cover at least twenty-five persons at date of issue[-]; and
- (7) The amounts of insurance under the policy ~~[must]~~ shall be based upon some plan precluding individual selection either by the members or by the association.

~~[(8)]~~ As used ~~[herein professional persons means]~~ in this section, “professional persons” means persons practicing a profession requiring examination and licensing under chapters 448, 453, 464, 466, and 605.”

SECTION 52. Section 431:10D-211, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-211 Credit union groups. The lives of the members of a credit union may be insured under a policy issued to the credit union ~~[which]~~ that shall be deemed the policyholder to insure members of the credit union for the benefit of persons other than the credit union or any of its officials, subject to the following requirements:

- (1) Except for ~~[item]~~ paragraph (2), the members eligible for insurance under the policy shall be all of the members of the credit union[-];
- (2) An insurer may exclude or limit the coverage on any member as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (3) The premiums for the policy shall be paid by the policyholder, either from the credit union’s own funds or from charges collected from the insured members specifically for the insurance, or from both; provided that when the premium is paid by the members, or by the credit union and its members jointly, at least seventy-five per cent of the then eligible members, excluding any as to whom evidence of insurability is not satisfactory to the insurer, ~~[must]~~ shall elect to make the required contributions[-]; and
- (4) The amounts of insurance under the policy ~~[must]~~ shall be based upon some plan precluding individual selection either by the members or by the credit union.

~~[(5)]~~ As used ~~[herein a credit union]~~ in this section, “credit union” means a credit union chartered under the provisions of the Federal Credit Union Act or article 10 of chapter 412.”

SECTION 53. Section 431:10D-212, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-212 Spouses and dependents of insured individuals. (a) Except for a policy issued under ~~[section]~~ sections 431:10D-203 and ~~[section]~~ 431:10D-211, insurance under any group life insurance policy issued pursuant to

this article may be extended to insure the employees or members of such groups against loss due to the death of their spouses and dependent children subject to the following:

- (1) The spouse and dependent of the individual insured may be covered in amounts of insurance equivalent to the amount of coverage of the insured individual, provided that in the case of a dependent other than a spouse of the insured individual the amount of insurance for the dependent shall not be in excess of fifty per cent of the coverage of the insured individual or \$5,000, whichever is less, and provided further that in the case of a dependent whose age at death is under six months, the amount shall not be in excess of \$2,000[-];
- (2) The premiums for the insurance of the spouse or dependent shall be paid either from funds contributed by the employer, union, association or other person to whom the policy has been issued, or from funds contributed by the individual insured, or from both[-]; and
- (3) An insurer may exclude or limit the coverage on any spouse or dependent child as to whom evidence of individual insurability is not satisfactory to the insurer.

[(4)] (b) For purposes of this section:

[(A)] ~~A dependent shall be~~ “Dependent” means a child of the insured individual:

- [(i)] (1) Under eighteen years of age; [or]
- [(ii)] (2) Under twenty-three years of age who is attending an educational institution and relying upon the insured individual for financial support; or
- [(iii)] (3) Regardless of age who is incapable of self-sustaining employment by reason of mental retardation or physical handicap and is chiefly dependent upon the insured individual for support and maintenance.

[(B)] ~~The term individual shall be deemed to include~~

“Individual” includes a person or a member of any group provided in section 431:10D-202 and [section] sections 431:10D-204 through [section] 431:10D-210.”

SECTION 54. Section 431:10D-213, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-213 Standard provisions required. (a) No policy of group life insurance shall be delivered or issued for delivery in this [State] state unless it contains in substance the standard provisions set forth below, or provisions [which] that in the opinion of the commissioner are more favorable to the individuals insured. The policy shall provide that:

- (1) Grace period. The policyholder is entitled to a grace period of not [less] fewer than thirty days, for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.
- (2) Incontestability. The validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by an individual insured under the policy relating to the individual’s

insurability shall be used in contesting the validity of the insurance with respect to which the statement was made, after the insurance has been in force prior to the contest for a period of two years during the individual's lifetime, nor unless it is contained in a written instrument signed by the individual.

- (3) The contract, representations. A copy of the application, if any, of the policyholder shall be attached to the policy when issued and become a part of the contract; all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such persons, or, in the event of death or incapacity of the insured person, to the person's beneficiary or personal representative.
- (4) Insurability. The conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the individual's coverage.
- (5) Misstatement of age. An equitable adjustment of premiums or of benefits or of both shall be made in the event the age of a person insured has been misstated, containing a clear statement of the method of adjustment to be used.
- (6) Beneficiary. Any sum becoming due by reason of the death of the individual insured shall be payable to the beneficiary designated by the individual subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of the sum, living at the death of the individual insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of the sum not exceeding \$2,000 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the individual insured.
- (7) Certificates. The insurer will issue to the policyholder for delivery to each individual insured an individual certificate setting forth a statement as to the insurance protection to which the individual is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in ~~[items]~~ paragraphs (8), (9), and (10).
- (8) Conversion on termination of eligibility. If the insurance, or any portion of it, on an individual covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, the individual shall be entitled to have issued to the individual by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits~~[-]~~; provided [application] that:
 - (A) Application for the individual policy shall be made, and the first premium paid to the insurer, within not ~~[less]~~ fewer than thirty days, after such termination~~[-]~~ and provided further that;
 - ~~[(A)]~~ (B) The individual policy shall, at the option of the individual, be on any one of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance~~[-]~~;
 - ~~[(B)]~~ (C) The individual policy shall be in an amount not in excess of the amount of life insurance ~~[which]~~ that ceases because of such termination nor less than \$1,000 unless a smaller amount of

coverage was provided for the individual under the group policy less the amount of any life insurance for which such person becomes eligible under the same or any other group policy within not ~~[less]~~ fewer than thirty days after such termination~~[-and];~~ provided ~~[further]~~ that any amount of insurance ~~[which]~~ that shall have matured on or before the date of such termination as an endowment payable to the individual insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount ~~[which]~~ that is considered to cease because of such termination; and

~~[(C)]~~ (D) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which the individual then belongs, and to the individual's age attained on the effective date of the individual policy.

- (9) Conversion on termination of policy. If the group policy terminates or is amended so as to terminate the insurance of any class of insured individuals, every individual insured thereunder at the date of such termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five years prior to the termination date shall be entitled to have issued to the individual by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by ~~[item]~~ paragraph (8), except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

(A) The amount of the individual's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the individual is or becomes eligible under any group policy issued or reinstated by the same or another insurer within not ~~[less]~~ fewer than thirty days of such termination~~[-];~~ or

(B) \$10,000.

- (10) Death pending conversion. If an individual insured under the group policy, or the insured dependent of a covered person, dies during the period within which the individual would have been entitled to have an individual policy issued to the individual in accordance with ~~[items]~~ paragraphs (8) and (9), and before such an individual policy shall have become effective, the amount of life insurance ~~[which]~~ that the individual would have been entitled to have issued to the individual under such individual policy shall be payable as a claim under the group policy, regardless of whether ~~[or not application for]~~ the individual policy or the payment of the first premium therefor has been made.

(b) ~~[Provisions set forth in items (6) to (10)]~~ Subsection (a)(6) through (a)(10) shall not apply to policies issued to a credit union to insure its members.

(c) ~~[Provisions set forth in items (6) and items (8) to (10)]~~ Subsection (a)(6), and (a)(8) through (a)(10) shall not apply to policies issued to a creditor to insure its debtors.

(d) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions ~~[which]~~ that in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but such nonforfeiture benefits are not required to be the same as those required for individual life insurance policies."

SECTION 55. Section 431:10D-407, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A copy of the basic illustration and a revised [basic] illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.”

SECTION 56. Section 431:10D-410, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-410³ Penalties.** In addition to any other penalties provided by the laws of this [State,] state, an insurer or producer that violates a requirement of this part shall be guilty of [f]an[}] unfair [trade] or deceptive act or practice in violation of article 13 [of this chapter].”

SECTION 57. Section 431:10D-502, Hawaii Revised Statutes, is amended by amending the definition of “direct-response solicitation” to read as follows:

““Direct-response solicitation” means a solicitation through a sponsoring or endorsing entity or [individually] individual solely through mails, telephone, the Internet, or other mass communication media.”

SECTION 58. Section 431:10D-505, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy’s or contract’s incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.”

SECTION 59. Section 431:10G-106, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10G-106 Verification of insurance.** Every insurer shall issue to each of its insureds a proof of insurance card for each motorcycle or motor scooter for which a liability policy under this [section] article is written. The proof of insurance card shall show the following:

- (1) Name, make, year, and factory or serial number of the motorcycle or motor scooter; provided that insurers of five or more motorcycles or motor scooters [which] that are under common registered ownership and used in the regular course of business shall not be required to indicate the name, make, year, and the factory or serial number of each motorcycle or motor scooter;
- (2) Policy number;
- (3) Names of the insured and the insurer; and
- (4) Effective dates of coverage including the expiration date.

The proof of insurance card shall be carried on the person operating the insured motorcycle or motor scooter at all times and shall be exhibited to a law enforcement officer upon demand.”

SECTION 60. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) When a filing is not accompanied by the information upon which the insurer supports the filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, the commissioner shall require the insurer to furnish additional information and, in ~~the~~ that event, the waiting period shall commence as of the date the information is furnished. Until the requested information is provided, the filing shall not be deemed complete or filed nor available for use by the insurer. If the requested information is not provided within a reasonable time period, the filing may be returned to the insurer as not filed and not available for use.”

SECTION 61. Section 431:14-106, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If within thirty days:

- (1) After a specific inland marine rate on a risk specially rated by a rating organization subject to section 431:14-104(k) has become effective; or
- (2) After a special surety or guaranty filing subject to section 431:14-104(k) has become effective;

the commissioner finds that such filing does not meet the requirements of this article, the commissioner shall send to the insurer, rating organization, or advisory organization~~[-which]~~ that made the filing, written notice of disapproval of the filing specifying in what respects the filing fails to meet the requirements of this article and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice.”

SECTION 62. Section 431:14-107, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) (1) Subject to rules ~~[and regulations which]~~ that have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any class of insurance or subdivision or class of risk, or a part or combination thereof, for which it is authorized to act as a rating organization. Notice of proposed changes in ~~[such]~~ the rules ~~[and regulations]~~ shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers.
- (2) The reasonableness of any rule ~~[or regulation]~~ in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days’ written notice to such rating organization and to the subscriber or insurer. If the commissioner finds that the rule ~~[or regulation]~~ is unreasonable in its application to subscribers, the commissioner shall order that the rule ~~[or regulation]~~ shall not be applicable to subscribers.
- (3) If the rating organization fails to grant or reject an insurer’s application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner, in accordance with ~~[item]~~ paragraph (2), as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, the commissioner shall order the rating organization to admit the insurer as a subscriber. If the commissioner finds that the action of the rating organization was justified, the commissioner shall make an order affirming its action.”

SECTION 63. Section 431:14-113, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The commissioner shall furnish the organization examined a copy of the examination report not [less] fewer than sixty days prior to the filing of the report for public inspection in the insurance division. If the organization so requests in writing during the sixty-day period, the commissioner shall hold a hearing to consider the organization’s objections to the report as proposed, and shall not file the report until after the hearing and until after any modifications in the report deemed necessary by the commissioner have been made. If the organization does not request a hearing on the report, the examination report shall be filed at the end of sixty days.

(c) Once filed, the report shall be available for public inspection and shall be admissible as a public record, except that the commissioner or the commissioner’s examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, regardless of whether ~~or not~~ a written report of the examination has at that time been either made, served, or filed in the insurance division.”

SECTION 64. Section 431:14A-103, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) On or after January 1, 1997, the company shall provide workers’ compensation coverage to Hawaii employers otherwise entitled to coverage but not able to or not electing to purchase coverage in the voluntary insurance market, and ~~are~~ not authorized, either individually or as a part of a group, to self-insure. An authorized self-insured is eligible for coverage upon termination of self-insurance.”

SECTION 65. Section 431:14A-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The administrator shall have [a] proven, successful experience as an executive at the general management level in the insurance business. The administrator shall manage and conduct the business of the company according to the board’s direction and policies. The administrator shall receive compensation authorized by the board.”

SECTION 66. Section 431:15-103⁴, Hawaii Revised Statutes, is amended to read as follows:

“**§431:15-103 Definitions.** (a) For the purposes of this article:

[~~(1) Ancillary state~~] “Ancillary state” means any state other than a domiciliary state.

[~~(2) Creditor is~~] “Creditor” means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

[~~(3) Delinquency proceeding~~] “Delinquency proceeding” means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under section 431:15-201 or [section] 431:15-202. [~~Formal delinquency proceeding means any liquidation or rehabilitation proceeding.~~]

[~~(4) Doing business includes any of the following acts, whether effected by mail or otherwise:~~] “Doing business” means transacting the business of insurance as defined in section 431:1-215,

[(A) The issuance or delivery of contracts of insurance to persons resident in this State;

(B) The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;

- (C) ~~The collection of premiums, membership fees, assessments, or other consideration for such contracts;~~
- (D) ~~The transaction of matters subsequent to execution of such contracts and arising out of them; or~~
- (E) Operating or operating, whether by mail or otherwise, as an insurer under a license or certificate of authority ~~[, as an insurer,]~~ issued by the insurance division.

~~[(5) Domiciliary state]~~ “Domiciliary state” means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

~~[(6) Fair consideration is]~~ “Fair consideration” means consideration given for property or obligation:

- ~~[(A)]~~ (1) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or
- ~~[(B)]~~ (2) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

~~[(7) Foreign country]~~ “Foreign country” means any other jurisdiction not in any state.

“Formal delinquency proceeding” means any liquidation or rehabilitation proceeding.

~~[(8) General assets]~~ “General assets” means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, general assets includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

~~[(9) Guaranty association]~~ “Guaranty association” means the ~~[Property and Casualty Post-Assessment Guaranty Association]~~ Hawaii insurance guaranty association created by part I of article 16, the Hawaii [Life and Health Guaranty Fund] life and disability insurance association created by part II of article 16, and any other similar entity now or hereafter created by the legislature of this ~~[State]~~ state for the payment of claims of insolvent insurers. Foreign guaranty association means any similar entities created by the legislature of any other state.

~~[(10) Insolvency or insolvent]~~ “Insolvency” or “insolvent” means:

- ~~[(A)]~~ (1) For an insurer issuing only assessable fire insurance policies:
 - ~~[(i)]~~ (A) The inability to pay any obligation within thirty days after it becomes payable~~[-];~~ or
 - ~~[(ii)]~~ (B) If an assessment be made within thirty days after such date, the inability to pay such obligation thirty days following the date specified in the first assessment notice issued after the date of loss pursuant to this code~~[-];~~
- ~~[(B)]~~ (2) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:
 - ~~[(i)]~~ (A) Any capital and surplus required by law for its organization~~[-];~~ or
 - ~~[(ii)]~~ (B) The total par or stated value of its authorized and issued capital stock~~[-];~~ and

~~[(C)]~~ (3)⁵ As to any insurer licensed to do business in this [State] state⁵ as of July 1, 1988, who does not meet the standard established under ~~[(B)]~~ (B), the term insolvency or insolvent shall mean, for a period not to exceed three years from July 1, 1988, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of this code.

~~[(D)]~~ For purposes of this section liabilities shall include but not be limited to reserves required by statute or by insurance division general regulations or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto.

~~[(11) Insurer]~~ "Insurer" means any person who has done, purports to do, is doing or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. For purposes of this article, any other persons included under section 431:15-102 shall be deemed to be insurers.

"Liabilities" include but are not limited to reserves required by statute, insurance division rules, or specific requirements imposed by the commissioner upon a subject company at the time of admission or subsequent thereto.

~~[(12) Preferred claim]~~ "Preferred claim" means any ~~[claims]~~ claim with respect to which the terms of this article accord priority of payment from the general assets of the insurer.

~~[(13) Receiver]~~ "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.

~~[(14) Reciprocal state]~~ "Reciprocal state" means any state other than this [State] state in which in substance and effect ~~[section]~~ sections 431:15-307(a), ~~[section]~~ 431:15-403, ~~[section]~~ 431:15-404, and ~~[section]~~ 431:15-406 through ~~[section]~~ 431:15-408 are in force, and in which provisions are in force requiring the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

~~[(15) Secured claim]~~ "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims ~~[which]~~ that have become liens upon specific assets by reason of judicial process.

~~[(16) Special deposit claim]~~ "Secured deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

~~[(17) State]~~ "State" means any state, district, or territory of the United States and the Panama Canal Zone.

~~[(18) Transfer includes]~~ "Transfer" means every method, direct or indirect, of disposing of property, of an interest in property, of the possession of property, of fixing a lien upon property, or upon an interest in property, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security interest in or title to property delivered to a debtor is considered a transfer by the debtor."

SECTION 67. Section 431:15-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) (1) Three or more judgment creditors holding unrelated judgments against an insurer, which judgments aggregate more than \$5,000 in excess of any security held by those creditors may commence proceedings against the insurer under the conditions and in the manner pre-

scribed in this subsection, by serving notice upon the commissioner and the insurer of intention to file a petition for liquidation under section 431:15-305 or [section] 431:15-402. Each of the judgments:

- (A) Shall have been rendered against the insurer by a court in this [State] state having jurisdiction over the subject matter and the insurer;
 - (B) Shall have been entered more than sixty days before the service of notice under [~~subsection (b);~~] this subsection;
 - (C) May not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless that contract has been breached by the insurer;
 - (D) May not have been satisfied in full;
 - (E) May not be a judgment assigned [~~in order~~] to institute proceedings under this subsection; and
 - (F) May not be a judgment on which an appeal or review is pending or may yet be brought.
- (2) If any one of the judgments in favor of a petitioning creditor remains unpaid for thirty days after service of the notice under [~~subsection (b);~~] this subsection, and the commissioner has not then filed a petition for liquidation, the creditor may file a verified petition for liquidation of the insurer in the manner prescribed by section 431:15-305 or [section] 431:15-402, alleging the conditions stated in this subsection. The commissioner shall be served and joined in the action.”

SECTION 68. Section 431:15-310, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The liquidator shall have the power to:
- (1) Appoint a special deputy to act for the liquidator under this article, and to determine the special deputy’s reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
 - (2) Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the liquidator deems necessary to assist in the liquidation;
 - (3) Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the court;
 - (4) Pay reasonable compensation to persons appointed, and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance division. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance division out of the first available moneys of the insurer;
 - (5) Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any party to subscribe to their testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records or other documents [~~which~~] that the liquidator deems relevant to the inquiry;

- (6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose to:
 - (A) Institute timely action in other jurisdictions, [~~in order~~] to forestall garnishment and attachment proceedings against such debts; [~~and~~]
 - (B) Do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as the liquidator deems best; and
 - (C) [~~To pursue~~] Pursue any creditor's remedies available to enforce his claims[-];
- (7) Conduct public and private sales of the property of the insurer;
- (8) Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 431:15-332;
- (9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
- (10) Borrow money on the security of the insurer's assets, or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;
- (11) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party;
- (12) Continue to prosecute and institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings in this [State] state or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 431:15-309, the liquidator shall have the power to apply to any court in this [State] state or elsewhere for leave to substitute the liquidator for the insurer as plaintiff;
- (13) Prosecute any action [~~which~~] that may exist on behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person;
- (14) Remove any or all records and property of the insurer to the offices of the commissioner or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;
- (15) Deposit in one or more banks in this [State] state such sums as are required for meeting current administration expenses and dividend distributions;
- (16) Invest all sums not currently needed, unless the court orders otherwise;
- (17) File any necessary documents for recordation in the bureau of conveyances or other appropriate office or elsewhere where property of the insurer is located;

- (18) Assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;
- (19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with ~~[section]~~ sections 431:15-315 through [section] 431:15-317;
- (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;
- (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states; and
- (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this ~~[State]~~ state not inconsistent with the provisions of this article."

SECTION 69. Section 431:15-317, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(j) If an insurer shall, directly or indirectly, within four months before the filing of a successful petition for liquidation under this article, or at any time in contemplation of a proceeding to liquidate it, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by ~~[the provision of]~~ subsection (a)(2)(D)."

SECTION 70. Section 431:15-327, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any claim that would have become absolute if there had been no termination of coverage under section 431:15-308, and ~~[which]~~ that was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to the claimant as prescribed by section 431:15-311. If allowed, the claim shall share in distributions under section ~~[431:15-332(g)]~~ 431:15-332(7)."

SECTION 71. Section 431:15-334, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The liquidator shall make distributions to guaranty funds or associations, or foreign guaranty funds or associations pursuant to the priority schedule of section 431:15-332 ~~[under subsection (b)]~~ to satisfy their claims under article 16 or similar laws of other states, if the claims have been filed pursuant to ~~[rules established under section 431:15-325(a) and (d)]~~ section 431:15-325. The liquidator

may protect against inequitable allocations by making payments to funds and associations subject to binding agreements by them to repay any portions of the distributions ~~[which] that~~ are later found to be in excess of an equitable allocation. If assets are available, the liquidator may also lend to guaranty funds and associations, subject to express advance court approval.”

SECTION 72. Section 431:15-410, Hawaii Revised Statutes, is amended to read as follows:

“§431:15-410 Subordination of claims for noncooperation. If an ancillary receiver in another state or foreign country, whether called an ancillary receiver or not, fails to transfer to the domiciliary liquidator in this ~~[State]~~ state any assets within the ancillary receiver’s control other than special deposits, ~~diminished only by the expenses of the ancillary receivership, if any, then the claims filed in the ancillary receivership, or with the guaranty fund or association in that jurisdiction, other than special deposit claims or secured claims, shall be placed in the class of claims under section [431:15-332(h).] 431:15-332(8).”~~

SECTION 73. Section 431:16-117, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The liquidator, receiver, or statutory successor of an insolvent insurer covered by this part shall permit access by the board of directors or its authorized representative to the insolvent insurer’s claim records that are necessary for the board in carrying out its functions under this part with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board of directors or its representative with copies of those records upon the request by the board and at the expense of the board.”

SECTION 74. Section 431:16-205, Hawaii Revised Statutes, is amended to read as follows:

“§431:16-205 Definitions. As used in this part:

~~[(a) Account]~~ **“Account”** means any of the three accounts created under section 431:16-206(a).

~~[(b) Association]~~ **“Association”** means the Hawaii ~~[Life and Disability Insurance Guaranty Association]~~ life and disability insurance guaranty association created under section 431:16-206.

~~[(c) Contractual obligation]~~ **“Contractual obligation”** means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 431:16-203.

~~[(d) Covered policy]~~ **“Covered policy”** means any policy or contract within the scope of this part under section 431:16-203.

~~[(e) Impaired insurer]~~ **“Impaired insurer”** means a member insurer ~~[which,]~~ that after July 1, 1988, is not an insolvent insurer, and:

- (1) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations~~[-];~~ or
- (2) Is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

~~[(f) Insolvent insurer]~~ **“Insolvent insurer”** means a member insurer ~~[which]~~ that after July 1, 1988, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

~~[(g) Member insurer]~~ **“Member insurer”** means any insurer licensed or who holds a certificate of authority to transact in this ~~[State]~~ state any kind of insurance for which coverage is provided under section 431:16-203, and includes any insurer

whose license or certificate of authority in this [State] state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

- (1) A nonprofit hospital or medical service organization;
- (2) A health maintenance organization;
- (3) A fraternal benefit society;
- (4) A mandatory state pooling plan;
- (5) A mutual assessment company or any entity that operates on an assessment basis;
- (6) An insurance exchange; or
- (7) Any entity similar to any of the above.

~~[(h) Moody's Corporate Bond Yield Average]~~ "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

~~[(i) Person]~~ "Person" means any individual, corporation, partnership, association, or voluntary organization.

~~[(j) Premiums]~~ "Premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. Premiums does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under section 431:16-203(b) except that assessable premium shall not be reduced on accounts under section 431:16-203(b)(2)(C) relating to interest limitations and section 431:16-203(c)(2) relating to limitations with respect to any one life and any one contract holder.

~~[(k) Resident]~~ "Resident" means any person who resides in this [State] state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

~~[(l) Supplemental contract]~~ "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

~~[(m) Unallocated annuity contract]~~ "Unallocated annuity contract" means any annuity contract or group annuity certificate ~~[which]~~ that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate."

SECTION 75. Section 431:16-211, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty days of the final action being appealed. If a member ~~[company]~~ insurer is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member ~~[company.]~~ insurer. Any final action or order of the commissioner shall be subject to judicial review in the circuit ~~[the]~~ court of the first judicial circuit."

SECTION 76. Section 431:16-212, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be the duty of the commissioner:

- (1) To notify the commissioners of all the other states, territories of the United States and the District of Columbia when the commissioner takes any of the following actions against a member insurer:
 - (A) Revocation of license;
 - (B) Suspension of license; or

- (C) Makes any formal order that such company restricts its premium writing, obtain additional contributions to surplus, withdraw from the ~~[State,]~~ state, reinsure all or any part of its business, or increase capital, surplus or any other account for the security of policyholders or creditors.

Such notice shall be mailed to all commissioners within thirty days following the action taken or the date on which such action occurs~~[-];~~

- (2) To report to the board of directors when the commissioner has taken any of the actions set forth in ~~[item]~~ paragraph (1) or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner~~[-];~~
- (3) To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that such company may be an impaired or insolvent insurer~~[-]; and~~
- (4) To furnish to the board of directors the National Association of Insurance Commissioners Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.”

SECTION 77. Section 431:19-102, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The commissioner ~~[shall]~~ may establish a list of ~~[advisors]~~ advisers to assist with the review of captive applications. The commissioner may appoint one ~~[advisor]~~ adviser from the list to review a specific application. The ~~[advisor's]~~ adviser's fee, ~~[if any, shall]~~ to be paid by the captive applicant, ~~[and]~~ shall be a reasonable fee authorized by the commissioner pursuant to section 431:19-114.”

SECTION 78. Section 431:20-118, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No title insurer, controlled escrow company, ~~[nor]~~ or underwritten title company shall:

- (1) Pay to the insured or to any other person any commission, any part of its premiums, fees or other charges; or any other consideration as inducement or compensation for the referral of title business, for performance of any escrow, or other service in connection with which a title policy is issued~~[-];~~
- (2) Make any rebate of any portion of the fee or charge shown by the schedule required in section 431:20-120. For purposes of this article, the amount by which any fee or charge is less than that called for by the then currently effective schedule of fees and charges of the title insurer is an unlawful rebate~~[-]; or~~
- (3) Quote any fee or make any charge for a title policy to any person ~~[which]~~ that is less than that currently available to others for the same type of title policy in a like amount covering property in the same county and involving the same factors as set forth in its then currently effective schedule of fees and charges. Nothing in this article shall

prohibit bulk rates or special rates for customers of prescribed classes if the bulk or special rates are provided for in the schedule.”

SECTION 79. Section 431:20-123, Hawaii Revised Statutes, is amended to read as follows:

“**§431:20-123 Remedies.** In enforcing this article, the commissioner shall be entitled to the remedies provided for in section 431:20-103(2), (3), and ~~[(14): (4)].~~”

SECTION 80. Section 431K-1, Hawaii Revised Statutes, is amended by amending the definition of “risk retention group” to read as follows:

““Risk retention group” means any corporation or other limited liability association formed under the laws of any state, Bermuda, or the Cayman Islands:

- (1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;
- (2) Which is organized for the primary purpose of conducting the activity described under paragraph (1);
- (3) Which:
 - (A) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
 - (B) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before this date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any group shall be considered to be a risk retention group only if the group has been engaged in business continuously since this date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as defined in the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., before the date of the enactment of the Liability Risk Retention Act of 1986, P.L. 99-563;
- (4) Which does not exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the person;
- (5) Which has as its:
 - (A) Members only persons who have an ownership interest in the group and ~~[which] that~~ has as its owners only persons who are members who are provided insurance by the risk retention group; or
 - (B) Sole member and sole owner an organization ~~[which] that~~ is owned by persons who are provided insurance by the risk retention group;
- (6) Whose members are engaged in business or activities similar or related to the liability of which these members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;
- (7) Whose activities do not include the provision of insurance other than:
 - (A) Liability insurance for assuming and spreading all or any portion of the liability for its group members; and
 - (B) Reinsurance with respect to the liability of any other risk retention group, or any members of another group, which is engaged

in businesses or activities so that this group or member meets the requirement described in paragraph (6) ~~[from]~~ for membership in the risk retention group ~~[which]~~ that provides this reinsurance; and

- (8) The name of which includes the phrase “risk retention group.””

SECTION 81. Section 431L-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family ~~[health]~~ coverage, as defined in section 431:10A-103, and reciprocal beneficiary family coverage, as defined in section 431:10A-601, the insurer shall be required:

- (1) To permit the parent to enroll, under the family coverage or reciprocal beneficiary family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;
- (2) If the parent is enrolled but fails to make application to obtain coverage for the child, to enroll the child under family coverage or reciprocal beneficiary family coverage upon application of the child’s other parent, the state agency administering the medicaid program, or the state agency administering the child support enforcement program; and
- (3) Not to disenroll (or eliminate coverage of) the child unless the insurer is provided satisfactory written evidence that:
 - (A) The court or administrative order is no longer in effect; or
 - (B) The child is or will be enrolled in comparable health coverage through another insurer ~~[which]~~ that will take effect not later than the effective date of disenrollment.”

SECTION 82. Section 431M-2, Hawaii Revised Statutes, is amended to read as follows:

“**§431M-2 Policy coverage.** All individual and group accident and health or sickness insurance policies issued in this ~~[State,]~~ state, individual or group hospital or medical service plan contracts, and nonprofit mutual benefit ~~[association]~~ society and health maintenance organization health plan contracts shall include within their hospital and medical coverage the benefits of alcohol dependence, drug dependence, and mental illness treatment services provided in section 431M-4 except that this section shall not apply to insurance policies that are issued solely for single diseases, or otherwise limited, “specialized coverage.”

SECTION 83. Section 431M-6, Hawaii Revised Statutes, is amended to read as follows:

“**§431M-6 Rules.** The insurance commissioner, after consultation with all interested parties including the director of health, the board of medical examiners, the board of psychology, and representatives of insurance carriers, nonprofit mutual benefit ~~[associations,]~~ societies, health maintenance organizations, public and private providers, consumers, employers, and labor organizations shall adopt rules pursuant to chapter 91 as are deemed necessary for the effective implementation and operation of this chapter. The rules shall include criteria and guidelines to be used in determining the appropriateness and medical or psychological necessity of services covered under this chapter, including the appropriate level of care or place of treatment and the number or quantity of services, and the objective and quantifiable criteria for determining when a health maintenance organization meets the conditions and requirements of section 431M-5, and shall include an appeals process.

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The director of health shall also adopt rules pursuant to chapter 91 as are deemed necessary for the implementation and operation of this chapter. [Said] The rules shall provide certification standards ~~[which:]~~ that:

- (1) Reflect quality of care; and
- (2) Do not compromise the quality of care.”

SECTION 84. Section 432:1-101.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this section shall prevent a mutual benefit society from taking any of the actions set forth in subsection (a) on the basis of loss history or medical condition, or for any other reason not otherwise prohibited by this section~~;~~ or any other law, regulation, or rule.”

SECTION 85. Section 432:1-203, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Where an action has been brought against an officer, or a counterclaim has been made, in an action brought by an officer, as prescribed in this section, another action, for the same cause, shall not be brought against the members of the society, or any of them, until after final judgment in the first action, and the return, wholly or partly unsatisfied or unexecuted, of an execution issued thereupon. After the return, the party in whose favor the execution was issued, may maintain an action, as follows:

- (1) Where such party was the plaintiff, or a defendant recovering upon a counterclaim, such party may maintain an action against the members of the society, or, in a proper case, against any of them, as if the first action had not been brought, or the counterclaim had not been made, as the case requires; and such party may recover, as part of such party’s damages, the costs of the first action, or so much thereof, as the sum, collected by virtue of the execution, was insufficient to satisfy; and
- (2) Where such party was a defendant, and the case is not within ~~[item]~~ paragraph (1), such party may maintain an action, to recover the sum remaining uncollected, against the persons who composed the society, when the action against such party was commenced, or the survivors of them.”

SECTION 86. Section 432:1-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before doing business or engaging in any act, any society as defined in section 432:1-104(2) shall file with the commissioner:

- (1) Copies of its constitution or organic instrument under which it purports to operate, and the bylaws, and rules and regulations, if any;
- (2) If a society promising or offering to pay death, sick, disability, or other benefits in an amount equal to or in excess of \$25:
 - (A) Copies of all proposed forms of benefit certificates, applications and circulars to be issued by the society~~;~~ and
 - (B) A bond in the sum of \$25,000 with sureties approved by the commissioner. The bond shall be conditioned upon the return of the advance payments referred to ~~[below:]~~ in section 432:1-304, if the organization is not completed within one year; and
- (3) Any additional information as the commissioner may require.”

SECTION 87. Section 432:1-304, Hawaii Revised Statutes, is amended to read as follows:

“§432:1-304 Authority to offer death, sick, disability, or other benefits; special deposit and control of certain funds. Except as provided in this section and section 432:1-305, all regular payments received for account of death benefit, ~~[disability]~~ accident and health or sickness, or other benefit funds, during the period of organization of a society, shall not be used for the payment of any expenses of the society, but shall be placed on deposit or in trust in some bank or trust company approved by the commissioner, payable to the society but under the joint control with the commissioner. In case the organization of the society is not completed within one year, the funds shall be returned to the applicants or members who made payments of the respective amounts. If, however, the organization is completed and the commissioner issues a certificate of compliance with the law, the funds so deposited in trust, together with interest, if any, shall be released by the commissioner in favor of the society.”

SECTION 88. Section 432:2-103.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this section shall prevent a fraternal benefit society from taking any of the actions set forth in subsection (a) on the basis of loss history or medical condition, or for any other reason not otherwise prohibited by this section[;] or any other law, regulation, or rule.”

SECTION 89. Section 432:2-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, such person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that the person is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization ~~[which]~~ that the person served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed:

- (1) In relation to any matter in such action, suit, or proceeding as to which the person shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society[;]; or
- (2) In relation to any matter in such action, suit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either such case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that the person's conduct was unlawful.

The determination whether the conduct of such person met the standard required ~~[in order]~~ to justify indemnification and reimbursement in relation to any matter described in ~~[items]~~ paragraph (1) or (2) may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to such action, suit, or proceeding, or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of no contest, as to such person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required ~~[in order]~~ to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of the person's heirs and personal representatives.”

SECTION 90. Section 432:2-404, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner’s equitable proportion of such deficiency as ascertained by its board, and that if the payment is not made either:

- (1) It shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or
- (2) In lieu of or in combination with ~~[item]~~ paragraph (1), the owner may accept a proportionate reduction in benefits under the certificate.

The society may specify the manner of the election and which alternative is to be presumed if no election is made.”

SECTION 91. Section 432D-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The cost of examinations under this section shall be assessed against the health maintenance organization being examined and remitted to the commissioner for deposit into the ~~[insurance examiners revolving]~~ compliance resolution fund.”

SECTION 92. Section 432D-27, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this section shall prevent a health maintenance organization from taking any of the actions set forth in subsection (a) on the basis of loss history or medical condition, or for any other reason not otherwise prohibited by this section[;] or any other law, regulation, or rule.”

SECTION 93. Section 432E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) After exhausting all internal complaint and appeal procedures available, an enrollee, or the enrollee’s treating provider or appointed representative, may file a request for external review of a managed care plan’s final internal determination to a three-member review panel appointed by the commissioner composed of a representative from a managed care plan not involved in the complaint, a provider licensed to practice and practicing medicine in Hawaii not involved in the complaint, and the commissioner or the commissioner’s designee in the following manner:

- (1) The enrollee shall submit a request for external review to the commissioner within sixty days from the date of the final internal determination by the managed care plan;
- (2) The commissioner may retain:
 - (A) Without regard to chapter 76, an independent medical expert trained in the field of medicine most appropriately related to the matter under review. Presentation of evidence for this purpose shall be exempt from section 91-9(g); and
 - (B) The services of an independent review organization from an approved list maintained by the commissioner;
- (3) Within seven days after receipt of the request for external review, a managed care plan or its designee utilization review organization shall provide to the commissioner or the assigned independent review organization:
 - (A) Any documents or information used in making the final internal determination including the enrollee’s medical records;

- (B) Any documentation or written information submitted to the managed care plan in support of the enrollee's initial complaint; and
- (C) A list of the names, addresses, and telephone numbers of each licensed health care provider who cared for the enrollee and who may have medical records relevant to the external review; provided that where an expedited [review] appeal is involved, the managed care plan or its designee utilization review organization shall provide the documents and information within forty-eight hours of receipt of the request for external review.

Failure by the managed care plan or its designee utilization review organization to provide the documents and information within the prescribed time periods shall not delay the conduct of the external review. Where the plan or its designee utilization review organization fails to provide the documents and information within the prescribed time periods, the commissioner may issue a decision to reverse the final internal determination, in whole or part, and shall promptly notify the independent review organization, the enrollee, the enrollee's appointed representative, if applicable, the enrollee's treating provider, and the managed care plan of the decision;

- (4) Upon receipt of the request for external review and upon a showing of good cause, the commissioner shall appoint the members of the external review panel and shall conduct a review hearing pursuant to chapter 91. If the amount in controversy is less than \$500, the commissioner may conduct a review hearing without appointing a review panel;
- (5) The review hearing shall be conducted as soon as practicable, taking into consideration the medical exigencies of the case; provided that:
 - (A) The hearing shall be held no later than sixty days from the date of the request for the hearing; and
 - (B) An external review conducted as an expedited appeal shall be determined no later than seventy-two hours after receipt of the request for external review;
- (6) After considering the enrollee's complaint, the managed care plan's response, and any affidavits filed by the parties, the commissioner may dismiss the request for external review if it is determined that the request is frivolous or without merit; and
- (7) The review panel shall review every final internal determination to determine whether the managed care plan involved acted reasonably. The review panel and the commissioner or the commissioner's designee shall consider:
 - (A) The terms of the agreement of the enrollee's insurance policy, evidence of coverage, or similar document;
 - (B) Whether the medical director properly applied the medical necessity criteria in section 432E-1.4 in making the final internal determination;
 - (C) All relevant medical records;
 - (D) The clinical standards of the plan;
 - (E) The information provided;
 - (F) The attending physician's recommendations; and
 - (G) Generally accepted practice guidelines.

The commissioner, upon a majority vote of the panel, shall issue an order affirming, modifying, or reversing the decision within thirty days of the hearing."

SECTION 94. Section 435C-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) (1) The rates, rating plan, rating classifications, territory, and policy forms applicable to the insurance written by the plan and statistics relating thereto shall be subject to sections 431:14-101 to 431:14-117 unless otherwise provided hereto, giving due consideration to the past and prospective loss and expense experience within and outside this [State] state for medical malpractice insurance of all of the member companies of the plan, trends in the frequency and severity of losses, the investment income of the plan, and such other information as the insurance commissioner may require;
- (2) Any deficit sustained by the plan in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:
- (A) An assessment upon the policyholders; or
- (B) A rate increase applicable prospectively;
- (3) Effective after the initial year of operation, rating plans and rating rules, and any provisions of recoupment through policyholder assessment or premium rate increase, [~~should~~] shall be based upon the plan’s loss and expense experience, together with such other information based upon such experience as the insurance commissioner may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting;
- (4) In the event that sufficient funds are not available for the sound financial operation of the plan, pending recoupment as provided in paragraph (3) of this subsection, all members shall, on a temporary basis contribute to the financial requirements of the plan in the manner provided for in section 435C-5. Any such contribution shall be reimbursed to the members following recoupment as provided in paragraph (3) of this subsection; and
- (5) The commissioner shall consider requiring the plan to offer policies on a claims made or occurrence basis; provided that the premium rate charged for the policies shall be at rates established on an actuarially sound basis and [~~which~~] that are calculated to be self-supporting.”

SECTION 95. Section 431:9-220, Hawaii Revised Statutes, is repealed.

SECTION 96. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁶

SECTION 97. This Act shall take effect on July 1, 2004.

(Approved June 15, 2004.)

Notes

1. Prior to amendment “it” appeared here.
2. End bracket missing.
3. Should be bracketed.
4. So in original.
5. Should be underscored.
6. Edited pursuant to HRS §23G-16.5.

ACT 123

H.B. NO. 851

A Bill for an Act Relating to Taxation Appeals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-114, Hawaii Revised Statutes, is amended to read as follows:

“§235-114 Appeals. Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth. Appeal may be made either to the district board of review or to the tax appeal court[; ~~provided that, for appeals other than to the board, the tax so assessed shall have been paid~~]. The first appeal to either the district board of review or to the tax appeal court may be made without payment of the tax so assessed. Either the taxpayer or the assessor may appeal to the tax appeal court from a decision by the board ~~[upon which the tax so assessed shall have been paid. If the taxpayer chose not to pay the tax when appealing to the board, and the]~~ or to an appellate court from a decision by the tax appeal court; provided that if the decision by the board or the tax appeal court is appealed by the taxpayer, or the decision by the board in favor of the department is not appealed, the taxpayer [must] shall pay the tax so assessed plus interest as provided in section 231-39(b)(4).

If the appeal is first made to the board, the appeal shall either be heard by the board or be transferred to the tax appeal court for hearing at the election of the taxpayer or employer. If heard by the board, an appeal shall lie from the decision thereof to the tax appeal court and to the supreme court in the manner and with the costs provided by chapter 232. The supreme court shall prescribe forms to be used in the appeals. The forms shall show the amount of taxes or liability upon the basis of the taxpayer's computation of the taxpayer's taxable income or the employer's computation of the employer's liability, the amount upon the basis of the assessor's computation, the amount upon the basis of the decisions of the board of review and tax appeal court, if any, and the amount in dispute. If or when the appeal is filed with or transferred to the tax appeal court, the court shall proceed to hear and determine the appeal, subject to appeal to the supreme court as is provided in chapter 232.

Any taxpayer or employer appealing from any assessment of income taxes or liability shall lodge with the assessor or assistant assessor a notice of the appeal in writing, stating the ground of the taxpayer's or employer's objection to the additional assessment or any part thereof. The taxpayer or employer ~~[shall]~~ shall file the notice of appeal with the board or the tax appeal court at any time within thirty days subsequent to the date when the notice of assessment was mailed properly addressed to the taxpayer or employer at the taxpayer's or employer's last known residence or place of business. Except as otherwise provided, the manner of taking the appeal, the costs applicable thereto, and the hearing and disposition thereof, including the distribution of costs and of taxes paid by the taxpayer pending the appeal, shall be as provided in chapter 232.

The tax appeal court may allow an individual taxpayer to file ~~[an]~~ a subsequent appeal without payment of the net income tax in cases where the total tax liability does not exceed \$50,000 in the aggregate for all tax years, upon proof that the taxpayer would be irreparably injured by payment of the tax.”

SECTION 2. Section 236D-15, Hawaii Revised Statutes, is amended to read as follows:

“§236D-15 Administration by department; action for collection of tax; appeal. The department may collect the taxes provided for in this chapter, including applicable interest and penalties, and shall represent this State in all matters pertaining to this chapter, either before courts or in any other manner. The department, through the attorney general, may institute proceedings for the collection of the taxes and any interest and penalties on the taxes.

The circuit court for any county which has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of Hawaii shall have jurisdiction to hear and determine all questions in relation to the estate tax arising under this chapter. If no probate or administration proceedings have been taken out in any court of this State, the circuit court for the county in which the decedent was a resident, if the decedent was a domiciliary, or, if the decedent was a nondomiciliary, any court which has sufficient jurisdiction over the property of the decedent, the transfer of which is taxable, to issue probate or administration proceedings thereon, had the same been justified by the legal status of the property or had the same been applied for, shall have jurisdiction. Any such court first acquiring jurisdiction shall retain the same to the exclusion of every other. The tax appeal court shall have jurisdiction to hear and determine all questions in relation to the generation-skipping transfer tax arising under this chapter.

Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment to a court of competent jurisdiction within the time set forth in section 235-114[; ~~provided the tax so assessed shall have been paid~~]. The distribution of taxes paid pending the appeal shall be as provided in chapter 232.”

SECTION 3. Section 237-42, Hawaii Revised Statutes, is amended to read as follows:

“§237-42 Appeals. Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid~~].”

SECTION 4. Section 237D-11, Hawaii Revised Statutes, is amended to read as follows:

“§237D-11 Appeals. Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid~~].”

SECTION 5. Section 238-8, Hawaii Revised Statutes, is amended to read as follows:

“§238-8 Appeal, correction of assessment. If any person having made the return and paid the tax as provided by this chapter feels aggrieved by the assessment so made upon the person by the director of taxation, the person may[; ~~provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid~~], appeal the assessment in the manner and within the time and in all other respects as provided in section 235-114, for which purpose the word “income” shall be deemed to refer to purchase price or value, as the case may be. The hearing and disposition of the appeal, including the distribution of costs [and of taxes paid pending the appeal,] shall be as provided in chapter 232.”

SECTION 6. Section 243-14.5, Hawaii Revised Statutes, is amended to read as follows:

“§243-14.5 Appeals. Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid~~]. The hearing and disposition of the appeal, including the distribution of costs ~~[and of taxes paid pending the appeal,]~~ shall be as provided in chapter 232.”

SECTION 7. Section 244D-12, Hawaii Revised Statutes, is amended to read as follows:

“§244D-12 Appeals. Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the taxes so assessed shall have been paid~~]. The hearing and disposition of the appeal, including the distribution of costs ~~[and of taxes paid pending the appeal,]~~ shall be as provided in chapter 232.”

SECTION 8. Section 245-10, Hawaii Revised Statutes, is amended to read as follows:

“§245-10 Appeals. Any person aggrieved by any assessment of the taxes imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the taxes so assessed shall have been paid~~]. The hearing and disposition of the appeal, including the distribution of costs ~~[and of taxes paid pending the appeal,]~~ shall be as provided in chapter 232.”

SECTION 9. Section 247-4.5, Hawaii Revised Statutes, is amended to read as follows:

“§247-4.5 Appeals. Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid~~]. The hearing and disposition of the appeal, including the distribution of costs ~~[and of taxes paid pending the appeal,]~~ shall be as provided in chapter 232.”

SECTION 10. Section 251-10, Hawaii Revised Statutes, is amended to read as follows:

“§251-10 Appeals. Any person aggrieved by any assessment of the surcharge tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[; ~~provided that, for appeals other than to the district board of review, the surcharge tax so assessed shall have been paid~~].”

ACT 124

SECTION 11. Section 346E-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[§346E-8]~~ **Appeals.** Any operator aggrieved by any assessment of the tax imposed by this chapter for any quarter or any year, may appeal from the assessment in the manner and within the time and in all other respects, as provided in the case of income tax appeals by section 235-114~~[-; provided the tax so assessed shall have been paid].~~”

SECTION 12. Section 431:7-204.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:7-204.5]~~ **Appeals.** Notwithstanding section 431:2-308, any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in section 235-114~~[-; provided the tax so assessed shall have been paid].~~”

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2004 and shall apply to tax appeals filed on or after July 1, 2004.

(Approved June 15, 2004.)

ACT 124

H.B. NO. 1820

A Bill for an Act Relating to Motor Vehicle Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:10C-111, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-111 Cancellation and nonrenewal of policies: when prohibited, when permitted.** (a) An insurer may not cancel or refuse to renew a motor vehicle insurance policy, including ~~[required]~~ optional additional insurance meeting the requirements of section 431:10C-302, once issued except when:

- (1) The license of the principal operator to operate the type of motor vehicle is suspended or revoked;
- (2) Premium payments for the policy are not made after reasonable demand therefor; ~~[or]~~
- (3) The nonrenewal or conditional renewal is limited in accordance with section 431:10C-111.5~~[-]; or~~
- (4) A motor vehicle insurance policy has been in effect for sixty days or less and cancellation of the policy is not based on any of the criteria prohibited by subsection (c).

(b) An insurer may refuse to renew optional additional coverage in excess of that which the insurer is required to make available to the insured under section 431:10C-302 where the insured is a member of a class set forth in section 431:10C-407(b)(1)(A) or (B) at the time of the refusal to renew.

(c) No insurer shall refuse to continue a motor vehicle insurance policy based solely upon a person's race, creed, ethnic extraction, age, sex, length of driving

experience, marital status, residence, physical handicap, or because an insured has elected to obtain any required or optional coverage or deductible required by law. If an insured alleges that the insurer's refusal to continue the motor vehicle insurance policy is based solely upon the insured's race, creed, ethnic extraction, age, sex, length of driving experience, marital status, residence, physical handicap, or because the insured has elected to obtain any required or optional coverage or deductible provided by law, the burden of proof shall rest with the insurer to prove that the refusal to continue the policy was not based on noncompliance with this subsection.

~~[(d) In any case of cancellation or refusal to renew, the insurer shall continue all motor vehicle insurance and optional additional coverages in force, to the date of expiration or for thirty days following notice, whichever date occurs first.~~

(e) (d) An insurer may also refuse to renew motor vehicle insurance policies:

- (1) If the commissioner determines that the financial soundness of the insurer would be impaired by the writing of additional policies of insurance; or
- (2) The insurer ceases to write any new policies of insurance of any kind in this State.

~~[(f)]~~ (e) Within fifteen days of a cancellation and the return of the motor vehicle insurance identification card or a signed affidavit stating the card was lost or stolen, the insurer shall refund the pro rata unearned portion, if any, of any prepaid premiums. Premiums shall be considered "earned" as provided in section 431:10C-109."

SECTION 2. Section 431:10C-112, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"§431:10C-112 Notice of cancellation or [non-renewal] nonrenewal; effect on term of coverage. (a) In ~~[any]~~ the case of cancellation or ~~[refusal to renew,]~~ nonrenewal of a motor vehicle insurance policy by the insurer, the insurer shall ~~[give]~~ mail a written notice of prospective cancellation or nonrenewal to the insured not ~~[less]~~ fewer than thirty days prior to the effective date of the cancellation or ~~[refusal to renew,]~~ nonrenewal. The insurer shall continue all motor vehicle insurance and optional additional coverages in force for thirty days following the mailing; provided that in the case of cancellation for the nonpayment of premiums the insurer shall:

- (1) Mail a written notice of prospective cancellation to the insured not fewer than twenty days prior to the effective date of the cancellation;
and
- (2) Continue all motor vehicle insurance and optional additional coverages in force for twenty days following the mailing.

Cancellation or ~~[refusal to renew]~~ nonrenewal shall not be deemed valid unless the mailing required by this section is supported by a certificate of mailing properly validated by the United States Postal Service."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved June 16, 2004.)

A Bill for an Act Relating to the State Art Museum.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide statutory authority for the ongoing operational funding for the state art museum and to conform chapter 9, Hawaii Revised Statutes, with the duties with respect to the art in public places and relocatable works of art programs, imposed on the state foundation on culture and the arts by section 103-8.5, Hawaii Revised Statutes; and the state art museum. This Act also establishes the friends of Hawaii state art museum citizens group.

SECTION 2. Chapter 9, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . ART IN PUBLIC PLACES AND RELOCATABLE WORKS
OF ARTS PROGRAMS AND STATE ART MUSEUM**

§9-A Purpose. The foundation shall administer the art in public places and relocatable works of art programs, pursuant to section 103-8.5, and the state art museum to achieve the following purposes:

- (1) Replace in public state buildings the natural beauty displaced in construction with works of art expressive of the State’s cultural, creative, and traditional arts of its various ethnic groups;
- (2) Support, promote, and recognize excellence of the State’s diverse cultural, creative, and traditional artists; and
- (3) Create, display, and maintain in public places and the state art museum a collection of works of art that:
 - (A) Represents the diversity and excellence of the State’s artistic expression; and
 - (B) Provides to all the citizens of the State the fullest possible access to the highest quality aesthetic and educational experiences available.

§9-B State art museum; establishment. The state art museum is established within the foundation. The operations of the state art museum shall be funded and supported by the works of art special fund, pursuant to section 103-8.5.

§9-C Friends of the Hawaii state art museum; establishment. (a) There shall be established a nonprofit group, the friends of the Hawaii state art museum, to work effectively with the foundation and its professional staff to enhance and support the work of the museum, its ancillary programs, and amenities, pursuant to this part.

(b) The friends of the Hawaii state art museum shall operate concessions or other for-profit business enterprises within or on the grounds of the state art museum as directed by the foundation, and may enter into contracts as approved by and with the foundation, and with any association, individuals, or corporations to further the purposes of this part.

(c) Funds generated by the friends of the Hawaii state art museum shall be used as supplemental funds that may be expended for the following purposes:

- (1) Employing personnel as required to operate and maintain the museum and ancillary programs for educational, cultural, and promotional purposes;

- (2) Planning and development of state art museum programs;
- (3) Construction, repairs, replacement, additions, and extensions of state art museum facilities;
- (4) Operational and maintenance costs of state art museum and ancillary programs and amenities;
- (5) Administrative costs of the state art museum; and
- (6) Doing other things necessary to accomplish the purpose of this chapter, including the adoption, amending, or repeal of rules pursuant to chapter 91."

SECTION 3. Section 9-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“State art museum” means the museum established pursuant to section 9-B.”

SECTION 4. Section 9-3, Hawaii Revised Statutes, is amended to read as follows:

“§9-3 Duties. The foundation shall:

- (1) Assist in coordinating the plans, programs, and activities of individuals, associations, corporations, and agencies concerned with the preservation and furtherance of culture and the arts and history and the humanities;
- (2) Establish written standards and criteria by which grant contracts shall be evaluated;
- (3) Appraise the availability, adequacy, and accessibility of culture and the arts and history and the humanities to all persons throughout the State and devise programs whereby culture and the arts and history and the humanities can be brought to those who would otherwise not have the opportunity to participate;
- (4) Stimulate, guide, and promote culture and the arts and history and the humanities throughout the State;
- (5) Devise and recommend legislative and administrative action for the preservation and furtherance of culture and the arts and history and the humanities;
- (6) Study the availability of private and governmental grants for the promotion and furtherance of culture and the arts and history and the humanities;
- (7) Through its executive director:
 - (A) Administer funds allocated by grant, gift, or bequest to the foundation; accept, hold, disburse, and allocate funds [which] that may become available from other governmental and private sources; provided that all those funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of any designation, the funds shall be disbursed or allocated for the promotion and furtherance of culture and the arts and history and the humanities; and
 - (B) Accept, hold, disburse, and allocate public funds that are made available to the foundation by the legislature for disbursement or allocation, pursuant to the standards and procedures established in part II, for the promotion and furtherance of culture and the arts and history and the humanities;
- (8) Submit an annual report with recommendations to the governor and legislature, prior to February 1, of each year. Annual reports shall

include the total number and amount of gifts and other grants and income received, payroll disbursements, contracts entered into, and progress and accomplishments made during the year, including the efforts of the Hawaii arts education partners and its progress in implementing the Hawaii arts education strategic plan[;] and the accomplishments of the art in public places and relocatable works of art programs and the state art museum;

- (9) Convene the Hawaii arts education partners, which is composed of the department of education, the colleges of education and arts and humanities of the University of Hawaii at Manoa, the Hawaii Association of Independent Schools, and the Hawaii Alliance for Art Education, to fully implement the terms of the Hawaii arts education strategic plan;
- (10) Display student art works in public buildings, sponsor student art displays, promote arts education, and in other ways encourage the development of creative talent among the young people of Hawaii;
- (11) In cooperation with qualified organizations, conduct research, studies, and investigations in the fields of ethnohistory and the humanities[; ~~make;~~];
 - (A) Make, publish, and distribute works documenting the contributions of individual ethnic groups in their relationship to one another and to the whole population of Hawaii; [~~place~~]
 - (B) Place ethnohistorical and cultural materials developed by the foundation or received by the foundation as gifts and donations in public archives, libraries, and other suitable institutions accessible to the public; and [~~maintain~~]
 - (C) Maintain a register of the location of such materials;
- (12) Cooperate with and assist the department of land and natural resources and other state agencies in developing and implementing programs relating to historic preservation, research, restoration, and presentation, as well as museum activities; [~~and~~]
- (13) Establish an individual artist fellowship program to encourage artists to remain and work in Hawaii and to reaffirm the importance of Hawaii's artists and their cultural and economic contributions to the State by:
 - (A) Recognizing and honoring Hawaii's exceptionally talented visual and performing artists for their outstanding work in and commitment [~~in~~] to the arts; and
 - (B) Enabling these artists to further their artistic goals[;];
- (14) In consultation with the comptroller and affected agencies and departments, administer the art in public places and relocatable works of art programs established pursuant to section 103-8.5; and
- (15) Administer the operations of the state art museum established pursuant to section 9-B."

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 16, 2004.)

ACT 126

S.B. NO. 2021

A Bill for an Act Relating to Street Rod Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 286-2, Hawaii Revised Statutes, is amended by amending the definition of "special interest vehicle" to read as follows:

"Special interest vehicle" means a vehicle of any age that, because of its significance, is being collected, preserved, restored, or maintained by a collector. The term includes a street rod vehicle and a street rod replica vehicle, as those terms are defined in section 286-26.5; a vehicle manufactured before [1949;] 1968; and a vehicle manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949;] 1968."

SECTION 2. Section 286-26.5, Hawaii Revised Statutes, is amended to read as follows:

"[~~§286-26.5~~] **Special interest vehicles.** (a) As used in this section:

"Collector" means an owner of one or more vehicles, including parts vehicles, who collects, purchases, acquires, trades, or disposes of a vehicle or its parts, for the owner's own use, to preserve, restore, and maintain the vehicle or another vehicle for hobby or historical purposes.

"Parts vehicle" means a vehicle that is owned by a collector to furnish parts for the restoration or maintenance of a special interest vehicle.

"Street rod replica vehicle" means a vehicle that was assembled from a manufactured kit, either as:

- (1) A complete kit to construct a new vehicle consisting of a prefabricated body and chassis;
- (2) Components manufactured before [1949;] 1968; or
- (3) Components manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949;] 1968;

and that has been modified in its body style or design through the use of nonoriginal or reproduction components, such as the frame, engine, drive train, suspension, or brakes, in a manner that does not adversely affect its safe performance as a motor vehicle or render the vehicle unlawful for use on public highways.

"Street rod vehicle" means a vehicle that was:

- (1) Manufactured before [1949;] 1968; or
- (2) Manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949;] 1968;

and that has been modified in its body style or design through the use of nonoriginal or reproduction components, such as the frame, engine, drive train, suspension, or brakes, in a manner that does not adversely affect its safe performance as a motor vehicle or render the vehicle unlawful for use on public highways. The term does not include a motorcycle, an antique vehicle, or a restored vehicle.

(b) If a street rod vehicle was manufactured before [1949] 1968 and has been modified in body style or design, the make and year of the vehicle shall be the year the vehicle most nearly resembles. If a street rod vehicle was manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949;] 1968, the body type of the vehicle shall be street rod vehicle or "STRD".

(c) A state vehicle identification number shall be issued to a street rod vehicle that was manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949;] 1968, when no vehicle identification number is present on the vehicle; when more than one vehicle identification number is present on the vehicle;

or when the vehicle identification number is absent from the body or frame, or both, of the vehicle. The state vehicle identification number shall be assigned by the director of finance of the county in which the vehicle resides[-]; provided that not more than one hundred vehicle identification numbers shall be issued annually.

To obtain a state vehicle identification number under this subsection, the owner of a street rod vehicle that was manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949] 1968 shall provide:

- (1) A title of ownership from the previous owner of the vehicle's body or frame;
- (2) A bill of sale or invoices for all major parts used in the modification of the vehicle; and
- (3) A weight certificate issued by a state-certified scale for the actual weight of the vehicle.
- (d) Notwithstanding any other law to the contrary:
 - (1) Street rod vehicles and street rod replica vehicles shall be equipped with the following equipment:
 - (A) Hydraulic service brakes on all wheels;
 - (B) Sealed beam or halogen headlights;
 - (C) Turn signals and a turn signaling switch;
 - (D) Safety glass or lexan windshield;
 - (E) Electric or vacuum windshield wiper located in front of the driver;
 - (F) Standard or DOT/SAE-approved tail lights; ~~and~~
 - (G) A parking brake that operates on at least two wheels on the same axle; ~~and~~
 - (H) Seat belt assembly as provided in section 291-11.6;
 - (2) Street rod vehicles and street rod replica vehicles shall be equipped in such a manner that no part of a vehicle, other than the vehicle's tires, will make contact with the surface of a flat highway when the vehicle is operated on the same;
 - (3) ~~[Seatbelts, bumpers,]~~ Bumpers, hoods, door handles, and fenders shall be optional equipment on street rod vehicles and street rod replica vehicles; and
 - (4) ~~[Seatbelts, bumpers,]~~ Bumpers, hoods, door handles, and fenders shall be optional equipment on vehicles manufactured before [1949,] 1968, and on vehicles manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949,] 1968.

In the event of a conflict between this subsection and equipment requirements specified in chapters 286, 291 and 291C, this subsection shall control.

(e) If a street rod replica vehicle was assembled from a manufactured kit as a complete kit to construct a new vehicle consisting of a prefabricated body and chassis, the year of the vehicle shall be the year the vehicle resembles as reflected on the manufacturer's certificate of origin. If a street rod replica vehicle was assembled from a manufactured kit as components manufactured before [1949] 1968 or components manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949,] 1968, the year of the vehicle shall be the year the vehicle resembles as reflected on the manufacturer's certificate of origin. The certificate of title for a street rod replica vehicle shall be for the make and year the vehicle resembles, and the body type of the vehicle shall be street rod vehicle replica (STRD-RPLC).

(f) The state vehicle identification number of a street rod replica vehicle that was assembled from a manufactured kit as a complete kit to construct a new vehicle consisting of a prefabricated body and chassis shall be taken from the manufacturer's certificate of origin. The state vehicle identification number shall be assigned

by the director of finance of the county in which the vehicle resides[-]; provided that not more than one hundred vehicle identification numbers shall be issued annually.

The state vehicle identification number of a street rod replica vehicle that was assembled from a manufactured kit as components manufactured before [1949] 1968 or components manufactured after [1948] 1967 to resemble a vehicle manufactured before [1949,] 1968, shall be taken from the manufacturer's certificate of origin or provided by the director of finance of the county in which the vehicle resides.

To obtain a state vehicle identification number under this subsection, the owner of a street rod replica vehicle shall provide:

- (1) Ownership documents from the manufacturer of the kit or components;
- (2) All shipping and freight documents for the kit or components; and
- (3) A weight certificate issued by a state-certified scale for the actual weight of the vehicle.

(g) A state vehicle identification number shall be issued to a street rod replica vehicle when the vehicle identification number is absent from the body or frame, or both, of the vehicle; or when the vehicle identification number is absent from the manufacturer's certificate of origin. The state vehicle identification number shall be assigned by the director of finance of the county in which the vehicle resides[-]; provided that not more than one hundred vehicle identification numbers shall be issued annually.

SECTION 3. Section 286-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) On and after January 1, 1972, no person shall display for sale, sell, or offer for sale for use in or upon, or as part of the equipment of a motor vehicle, trailer, semitrailer, or pole trailer any head lamp, auxiliary or fog lamp, rear lamp, signal lamps, or reflector, which reflector is required by law, or any glazing material, hydraulic brake fluid, ~~[seat belt, shoulder harness or seat belt and shoulder harness assembly]~~ or seat belt assembly as defined in section 291-11.6, unless the device is of a type ~~[which]~~ that has been submitted to the director of transportation and approved by the director. This subsection shall not apply to equipment in actual use on May 25, 1971, or replacement parts therefor[-], except seat belt assemblies required under section 286-26.5(d).”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 16, 2004.)

ACT 127

H.B. NO. 1824

A Bill for an Act Relating to Electricians and Plumbers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 448E-8, Hawaii Revised Statutes, is amended to read as follows:

“**\$448E-8 Fees; renewals.** (a) Renewal fees shall be paid to the board before July 1.

(b) Plumbers shall renew the license ~~[each even-numbered year.]~~ every three years effective June 30, 2006 and shall pay all required fees. Prior to the June 30, 2009 renewal of the license, and prior to every license renewal thereafter, the applicant shall:

- (1) Pay all required fees; and
- (2) Meet the requirements prescribed in section 448E-8.5.

(c) Electricians shall renew the license every three years effective with the July 1, 1996, renewal; provided that prior to the renewal of the license the applicant shall pay:

- (1) Pay all required fees ~~[prior to the renewal of the license];~~ and ~~[provided further that the applicant shall meet]~~
- (2) Meet the requirements prescribed in section 448E-8.5.

(d) Failure, neglect, or refusal of any licensee to ~~[either]~~ pay the renewal fee[;] or ~~[in the case of an electrician to]~~ meet the requirements of section 448E-8.5[;] before the renewal date shall constitute a forfeiture of the license. Any license so forfeited may be restored upon written application within one year from the date of forfeiture, upon payment of the required renewal fee plus penalty fees[;] and ~~[for electricians,]~~ upon meeting the requirements in section 448E-8.5.”

SECTION 2. Section 448E-8.5, Hawaii Revised Statutes, is amended to read as follows:

“§448E-8.5 Continued competency; license renewals. (a) ~~[AH]~~ Prior to each license renewal, all licensed electricians except [the] maintenance electricians [licensed by the board prior to each license renewal] shall:

- (1) Furnish the board with proof of attendance at an educational course related to current updates of the National Electrical Code conducted or approved by the community colleges[;] or
- (2) Successfully complete an examination prescribed by the board on current updates to the National Electrical Code. The board shall contract with a professional testing agency to prepare, administer, and grade the examination. Fees related to the examination shall be paid by the licensee directly to the professional testing agency.

(b) Prior to each license renewal, all licensed plumbers shall:

- (1) Furnish the board with proof of attendance at an educational course related to current updates of the Uniform Plumbing Code conducted or approved by the community colleges; or
- (2) Successfully complete an examination prescribed by the board on current updates to the Uniform Plumbing Code. The board shall contract with a professional testing agency to prepare, administer, and grade the examination. A licensee shall pay all fees related to the examination directly to the professional testing agency.

~~[(b)]~~ (c) A licensee who has been issued a new license within one year of the renewal date shall not be required to take the course or the examination to renew the licensee’s license.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved June 16, 2004.)

ACT 128

H.B. NO. 1786

A Bill for an Act Relating to Exempt Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

“§76-16 Civil service and exemptions. (a) The State Constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment procedures based on merit and that the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section, or sections 46-33 and 76-77.

(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each

- judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
 - (11)
 - (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
 - (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
 - (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
 - (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
 - (12) Employees engaged in special, research, or demonstration projects approved by the governor;
 - (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
 - (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
 - (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
 - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of

the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: [behavioral]

- (A) Behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; [an]
- (B) An administrative assistant to the state librarian; and [an]
- (C) An administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff;
- (26) A gender and other fairness coordinator hired by the judiciary; and
- (27) Positions in the Hawaii national guard youth challenge academy.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955.

(c) No position shall be exempted from civil service recruitment procedures unless it is in accordance with this section. In addition to the exemptions under subsection (b), sections 46-33 and 76-77, or other law, the director may exempt additional positions if the reason for exempting the position is for the same reason as a position that is included in the list of exemptions for the respective jurisdiction.

(d) The director may provide for an exemption from civil service recruitment procedures if the appointment to the position has a limitation date and it would be impracticable to recruit under civil service recruitment procedures because the required probation period that is part of the examination process cannot be com-

pleted by the limitation date. The rules shall not permit additional exemptions from civil service recruitment procedures for the same position when the position will be filled for a duration that would be sufficient to recruit under civil service recruitment procedures and allow for completion of the required probation period.

(e) It is also the public policy of the State that all civil service positions be covered under the classification systems of the jurisdictions, unless the position was exempted from the classification systems by law prior to July 1, 2002, or based on reasons set forth in rules. The rules may include reasons for a temporary exemption of a position, such as the establishment of a new class is pending, or for a permanent exemption when the establishment of a class is impracticable.

(f) The exemption of a position from the classification systems, whether temporary or permanent, or an appointment with a limitation date shall not itself result in an exemption from civil service recruitment procedures. Civil service recruitment procedures based on merit shall be followed for all positions unless exempted under subsection (b), (c), or (d). Applicants referred under civil service recruitment procedures shall be informed if the appointment has a limitation date or if the position is temporarily or permanently exempted from the classification systems.

(g) Each director shall be responsible for ensuring that all exemptions from civil service recruitment procedures or from the classification systems are consistent with this section. With respect to positions exempted under this section prior to July 1, 2002, by any other law, the director shall review these positions to determine whether the positions should continue to be exempt and if so, whether from civil service recruitment procedures or the classification systems, or both. If the director determines that a position should no longer be exempt from either or both based on the intent of this section, the director shall consult with the appropriate appointing authority and its chief executive on removing the exemptions. With the approval of the chief executive, the director shall take whatever action is necessary to remove the exemptions, including submittal of proposed legislation to remove the exemptions.

(h) The director shall establish rules to implement this section that shall be in accordance with the following:

- (1) Whenever a position exempted under subsection (b) or (c) is no longer exempted from the civil service, normal civil service recruitment procedures shall apply, unless the incumbent is to be retained without the necessity for examination by action of the legislature; provided that in such event, the incumbent shall be retained, but only if the incumbent meets the minimum qualification requirements of the position; and
- (2) The manner for setting the compensation of incumbents upon their inclusion in the classification systems shall be fair and equitable in comparison to the compensation of other incumbents with comparable experience in the same or essentially similar classes; provided that the compensation of incumbents who are in the same bargaining unit, prior to and after their inclusion in the classification systems, shall be in accordance with the applicable collective bargaining agreement.

(i) Employees in positions subject to civil service recruitment procedures shall be entitled to become and remain members of the civil service for the duration of their appointments as provided in section 76-27. Employees in positions exempted from civil service recruitment procedures shall not be entitled to membership in the civil service.

(j) Employees in exempt positions who have performed work satisfactorily for six or more consecutive years shall be eligible to apply for:

- (1) Intra-departmental and inter-departmental transfers; and
- (2) Intra-departmental and inter-departmental promotional exams

for which they meet the minimum qualifications as prescribed by the class specification.

In evaluating minimum qualifications, related exempt experience may be considered state civil service experience in a class deemed comparable by the department of human resources development, based upon the duties and responsibilities assigned.

[(j)] (k) Employees in positions that are exempted from the classification plan, whether temporarily or permanently, may be entitled to membership in the civil service as provided in subsection (i).''

SECTION 2. The legislative reference bureau shall compile a list of all statutory references to positions exempted from the civil service and submit a report of its findings to the legislature at least twenty days prior to the convening of the regular session of 2005.

SECTION 3. The department of human resources development shall complete its review of all positions exempted from civil service in accordance with House Concurrent Resolution No. 94, Regular Session of 2003, and submit a report of its findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 2005.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2004, and shall be repealed on July 1, 2006; provided that section 76-16, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2004.

(Approved June 16, 2004.)

ACT 129

H.B. NO. 1756

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist High Technology Industrial Enterprises.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there has been an exponential increase in the development of unmanned vehicle systems (UVS) for sea, air, land, and space applications. The growth has come especially in the use of unmanned aerial vehicles (UAVs), with the Department of Defense using them routinely for reconnaissance, the National Aeronautics and Space Administration exploring environmental and commercial applications, and the Department of Homeland Security applying them in the security of the country.

The legislature also finds that there is an opportunity for Hawaii to develop UVS, UAV technologies, and operational concepts, because Hawaii has an ideal infrastructure and support base for creating, developing, and testing integrated multi-use unmanned systems, such as:

- (1) High tech infrastructure;
- (2) Many military, science, and commercial partners;
- (3) Academic and research resources; and
- (4) Open skies, land masses, and seas necessary for test operations.

The legislature further finds that Electricore, Inc., a consortium of science and commercial partners, is uniquely qualified to function as the developer and operator of the Mid-Pacific Unmanned Systems Test Center. Mid-Pacific Unmanned Systems Test Center will develop extreme-endurance, high-altitude UAVs like the Helios, which can function as platforms for multiple missions and technologies. Hawaii will benefit from:

- (1) The technological growth in UVS, UAVs, and multi-use sensors development;
- (2) The location of operational centers in Hawaii;
- (3) The incubation of commercial opportunities through the development of new technologies;
- (4) The establishment of a new industry with high technology jobs; and
- (5) Other educational and research opportunities.

The legislature finds that chapter 206M, Hawaii Revised Statutes, permits the State to financially assist high technology industrial enterprises through the issuance of special purpose revenue bonds. The legislature finds that the Hawaii operations of Electricore, Inc., are a high technology industrial enterprise meeting the qualifications for special purpose revenue bond assistance under chapter 206M, Hawaii Revised Statutes. The special purpose revenue bonds authorized under this Act will provide low-interest rate bond financing for facilities for the development and production of UVS, UAVs, and the multi-use sensor technologies associated with integrated multi-use unmanned systems.

For the foregoing reasons, the legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and is beneficial to the public health, safety, and general welfare.

SECTION 2. Pursuant to chapter 206M, Hawaii Revised Statutes, the high technology development corporation, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$30,000,000 for the purpose of assisting the Hawaii operations of Electricore, Inc., in the planning, design, construction, and operation of facilities for the development and production of unmanned vehicle systems, unmanned aerial vehicles, and the technologies associated with integrated multi-use unmanned systems. The legislature finds and determines that the activities and facilities of Electricore, Inc., constitute a project as defined in chapter 206M, Hawaii Revised Statutes, and the financing thereof is assistance to a high technology industrial enterprise.

SECTION 3. The high technology development corporation is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose revenue bonds in whatever principal amounts the high technology development corporation shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the high technology development corporation shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to chapter 206M, Hawaii Revised Statutes, relating to the power

of the high technology development corporation to issue special purpose revenue bonds to assist high technology industrial enterprises.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 6. This Act shall take effect on July 1, 2004.

(Approved June 17, 2004.)

ACT 130

H.B. NO. 2739

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds by the High Technology Development Corporation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Biotechnology-related research and development represents one of the fastest-growing industries in the world and has made significant advancements in medical treatment and technology in past years. In addition to its contributions in the field of medicine, biotechnology-related research and development annually generates billions of dollars in revenue.

Hawaii has taken meaningful steps in becoming an important location for biotechnology-related research and development. With the near completion of the University of Hawaii medical school at Kakaako, Hawaii is poised to become one of the leaders in this field. To attract new biotechnology companies to Hawaii as well as support existing biotechnology companies, additional wet lab space needs to be created, and a biotech incubator needs to be constructed. The creation of wet lab space and construction of a biotech incubator will not only assist Hawaii biotechnology companies in their research but more importantly, it will attract additional biotechnology companies and research to Hawaii. This influx of additional companies and research projects will not only diversify Hawaii's economy but also lead to economic growth.

The legislature finds and determines that the issuance of special purpose revenue bonds under this Act is in the public interest and is for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part I, chapter 206M, Hawaii Revised Statutes, the high technology development corporation, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$100,000,000, in one or more series, for the purpose of assisting Townsend Capital, LLC, a Maryland limited liability company, to finance the acquisition, construction, improvement, installation, equipping, and development of land, buildings, and other improvements thereon to provide wet lab space and a biotech incubator near the University of Hawaii medical school at Kakaako. The legislature finds and determines that the financing of a wet lab space and a biotech incubator constitutes a "project" as defined in part I, chapter 206M, Hawaii Revised Statutes, and the financing thereof is assistance to a high technology industrial, manufacturing, or processing enterprise within the meaning of article VII, section 12 of the state constitution and part I, chapter 206M, Hawaii Revised Statutes.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part I,

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chapter 206M, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist high technology industrial, manufacturing, or processing enterprises.

SECTION 4. The high technology development corporation is authorized, from time to time, including times subsequent to June 30, 2009, to issue special purpose revenue bonds in whatever principal amounts the corporation shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for multi-project programs.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2009.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 17, 2004.)

ACT 131

H.B. NO. 2322

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Processing Enterprises.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$12,000,000, in one or more series, for the purpose of assisting Aloun Farms, a Hawaii corporation, in building an agricultural processing plant. The legislature hereby finds and determines that planning, design, construction, and equipping of facilities for an agricultural processing plant constitute a project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a processing enterprise.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2007, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the

refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2007.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 17, 2004.)

ACT 132

S.B. NO. 2425

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-1185, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1185 New century charter schools; funding. (a) Beginning with the fiscal year 2004-2005 supplemental budget request, and each budget request thereafter, the charter school administrative office shall submit a request for general fund appropriations for each new century charter school based upon:

- (1) The actual and projected enrollment figures in the current school year for each charter school; and
- (2) A per pupil amount for each regular education and special education student, which shall be equivalent to the total per pupil cost based upon average enrollment in all cost categories, including comprehensive school support services but excluding special education services, and for all means of financing except federal funds, as reported in the most recently published department of education consolidated annual financial report[-], provided that the legislature may make an adjustment to the per pupil allocation for the purposes of this section.

The legislature shall make an appropriation based upon the budget request; provided that [{}the{}] legislature may make additional appropriations for collective bargaining increases for charter school employee members of collective bargaining units, fringe and other employee benefits, facility costs, and for other requested amounts. The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

(b) All federal financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services related to federal grants and subsidies are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the charter school's federal grants and subsidies.

Any new century charter school shall be eligible to receive any supplementary financial grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to new century charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to

these supplementary grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the supplementary grant for which the services are used.

All additional funds that are generated by the local school boards, not from a supplementary grant, shall be separate and apart from allotted funds and may be expended at the discretion of the local school boards.

(c) To enable new century charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the charter school administrative office shall:

- (1) Provide ~~[forty]~~ fifty per cent of a new century charter school's per pupil allocation based on the new century charter school's projected student enrollment no later than ~~[August 1]~~ July 20 of each fiscal year; provided that the new century charter school shall submit to the charter school administrative office a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional ~~forty~~ per cent of a new century charter school's per pupil allocation no later than ~~[October]~~ November 15 of each year; provided that the new century charter school shall submit to the charter school administrative ~~[office a verified student enrollment no later than September 15 of each year; and]~~ office:
 - (A) Student enrollment as verified on October 15 of each year, provided that the student enrollment shall be verified on the first day of business immediately prior to October 15 should that date fall on a weekend;
 - (B) An accounting of the percentage of student enrollment who transferred from public schools established and maintained by the department, provided that these accountings shall also be submitted by the charter school administrative office to the legislature no later than twenty days of each regular session; and
- (3) ~~[Provide the]~~ The remaining [twenty] ten per cent per pupil allocation of a new century charter school [based on the new century charter school's verified student enrollment] no later than January 1 of each year; provided that the new century charter school shall submit to the charter school administrative office a revised student enrollment no later than December 1 of each year.] year as a contingency balance to ensure fiscal accountability.

(d) The department shall provide appropriate transitional resources to a new century conversion charter school for its first year of operation as a charter school based upon the department's allocation to the school for the year prior to the charter school's conversion.

(e) No new century charter school ~~[nor]~~ or new century conversion charter school may assess tuition.

(f) The department shall transfer additional funds from EDN 100 to EDN 600 for new century charter schools whose student enrollment, verified on or immediately prior to October 15 as provided for by subsection (c), exceeds the new century charter schools' projected student enrollment, in an amount corresponding to the number of additional students and the per pupil allocation. The charter school administrative office shall transfer from EDN 600 to EDN 100 any excess per pupil allocations for new century charter schools whose verified student enrollment is lower than their projected student enrollment in an amount corresponding to the lower number of students and the per pupil allocation."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,472,714, or so much thereof as may be necessary for fiscal year 2004-2005, for new century charter schools.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2004.

(Approved June 17, 2004.)

ACT 133

H.B. NO. 2667

A Bill for an Act Relating to Hawaiian Language Medium Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that an instructional program in which children meet the State's educational standards through the medium of the Hawaiian language is a vehicle for revitalizing, maintaining, and strengthening the Hawaiian language for its speakers and the State as a whole. The purpose of this Act is to establish the Hawaiian language medium education program and to enable its full implementation.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HAWAIIAN LANGUAGE MEDIUM EDUCATION

§ -1 **Hawaiian language medium education program; established.** The Hawaiian language medium education program may be established as a complete educational program or schooling experience provided to students in the medium of the Hawaiian language. The educational objectives of this program shall take into consideration how its content integrates with Hawaiian language and culture curricula and Hawaiian language medium curricula offered at the preschool and college levels, may be the same as the English language medium program, and may fulfill unique Hawaiian language medium education program goals.

§ -2 **Attendance and eligibility.** All children of compulsory school age choosing to enroll in the Hawaiian language medium program in families of fluent Hawaiian-speaking persons may be given preference for admittance. Other persons may enroll at the discretion of individual school sites under the conditions described above and in compliance with applicable state and federal laws. All students and their families shall abide by the special rules of the program with respect to family participation.

§ -3 **Office of Hawaiian language medium education; personnel.** The department of education may create a separate office of Hawaiian language medium education for the direction and control of the program. The department may employ

necessary personnel qualified by training and experience to direct and supervise the types of instruction and special services specified in this chapter. Publicly funded institutions of higher education may create teacher preparation programs to ensure that pre-service training is provided to students interested in teaching elementary and secondary students in the Hawaiian language.

§ -4 **Facilities or transportation.** When fifteen or more qualified children in any one departmental school district wish to enroll in the Hawaiian language medium education program, the superintendent of education may provide facilities for a Hawaiian language medium education program or provide transportation to the nearest schooling site providing the program, including a charter school site or laboratory school site.

§ -5 **Student performance.** The department of education may develop and use multiple assessment strategies and instruments to assess student achievement and performance and to evaluate the effectiveness of teaching strategies and methods being used in the Hawaiian language medium education program.

§ -6 **Hawaiian language medium state education agency; districts and complex areas.** The department of education may establish a Hawaiian language medium state education agency with the capability of operating districts and complex areas on an equal basis with any other districts and complex areas of the department. The Hawaiian language medium state education agency shall encompass the entire State, may administer schools consisting of geographically non-contiguous classes, boarding schools, charter schools, or cyber schools and may share facilities, administration, programs, resources, and funding with other public, charter, and private schools and colleges as appropriate. All schools and programs taught through the medium of the Hawaiian language shall be included in the Hawaiian language medium state education agency.

§ -7 **Collaboration.** The department of education shall work collaboratively with the Hawaiian language college of the University of Hawaii at Hilo and any other entities recognized by the legislature for the purpose of addressing Hawaiian language medium education, extending to those entities support for inclusion in the special provisions for children and families enrolled in the Hawaiian language medium education program of the department and maximizing the joint use of existing and new resources to meet the goal of revitalizing, maintaining, and strengthening the Hawaiian language.”

SECTION 3. Section 302A-630, Hawaii Revised Statutes, is amended to read as follows:

“[§302A-630] **Teachers with special assignments, vocational agriculture, [and] technical school teachers[.], and staff and administrators in Hawaiian language medium education.** (a) Teachers with special assignments, where their responsibilities are greater, may be provided additional benefits by the department.

(b) Teachers in Hawaiian language medium education whose responsibilities are greater or unique and require additional language skills may be provided additional benefits by the department.

(c) In determining additional benefits for vocational agriculture and technical school teachers, the department may allow credit for practical experience.

(d) In determining additional benefits for teachers, staff, and administrators in Hawaiian language medium education, the department may allow credit for practical experience.”

SECTION 4. Section 302A-1128, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall have entire charge and control and be responsible for the conduct of all affairs pertaining to public instruction. The department may establish and maintain schools for secular instruction at such places and for such terms as in its discretion it may deem advisable and the funds at its disposal may permit. The schools may include high schools, kindergarten schools, schools or classes for pregrade education, boarding schools, Hawaiian language medium education schools, and evening and day schools. The department may also maintain classes for technical and other instruction in any school where there may not be pupils sufficient in number to justify the establishment of separate schools for these purposes.”

SECTION 5. Section 302A-1143, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-1143]~~ **Attend school in what district.** All persons of school age shall be required to attend the school of the district in which they reside, unless enrolled in a Hawaiian language medium education program, or unless it appears to the department to be desirable to allow the attendance of pupils at a school in some other district, in which case the department may grant this permission.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 18, 2004.)

ACT 134

S.B. NO. 3148

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the charter school movement has gained momentum nationwide as a way to encourage innovation and excellence in public education. Accountable directly to the students, parents, and communities they serve, charter schools are constantly developing novel ways to improve student achievement while providing an educational atmosphere that cannot be duplicated in traditional schools.

The legislature finds that the State needs to allow charter schools the freedom to develop fully. In some states, each individual charter school is a local educational authority. In other states, there are varying ways for charters to be formed and governed. This Act seeks to address some of the questions that have arisen relating to the governance, administration, accountability, and growth of the charter school movement in Hawaii.

The legislature further finds that article X, section 4, of the Hawaii state constitution requires the State to promote the study of Hawaiian culture, history, and language and provide for a Hawaiian education program consisting of language, culture, and history in public schools. The constitution further states that the use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program. In Hawaii, many charter schools

help to fulfill this mandate by engaging their students in Hawaiian history, culture, and language.

The purpose of this Act is to:

- (1) Explore the opportunities as well as the challenges regarding creating multiple local educational authorities, adding school districts, creating non-contiguous charter school districts, changing the relationships among and between groups of charter schools, associations between some or all of the charter schools, associations between charter schools and other schools, and the evolving relationships of these entities with existing parts of our public school structure. The dynamics that may emerge from the changed charter school relationships with the federal government, State of Hawaii, office of Hawaiian affairs, board of education, department of education, and charter school administrative office need to be clarified; and
- (2) Study the feasibility of establishing a noncontiguous host culture charter school district and a noncontiguous charter school district in order to solidify existing host culture focused charter schools, increase charter school autonomy, and provide opportunities for additional federal funding.

SECTION 2. The legislative reference bureau shall conduct a feasibility study regarding the establishment of a noncontiguous host culture charter school district and a noncontiguous charter school district in the State in order to solidify existing host culture focused charter schools, increase charter school autonomy, and provide opportunities for additional federal funding. The study shall include an analysis of pertinent issues including but not necessarily limited to:

- (1) The financial and administrative implications of creating these additional school districts and of establishing local educational agency (LEA) status for the purpose of obtaining additional federal funding;
- (2) An analysis of how the new districts would interact administratively with the board of education and the existing charter school administrative structure in the department of education; and
- (3) An analysis of whether the districts would violate the fourteenth amendment to the United States Constitution.

In conducting the study, the legislative reference bureau shall review and consider, but not be limited to, the proposals set forth in Senate Bill 3148, S.D. 2 and Senate Bill 3148, S.D. 2, H.D. 3 considered by the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004. If the legislative reference bureau is unable to conduct the study by itself out of available resources, it may secure resources from external sources and work with independent consultants and other entities as the legislative reference bureau deems appropriate. The legislative reference bureau shall be exempt from chapter 103D, Hawaii Revised Statutes, for the purposes of this Act.

SECTION 3. The legislative reference bureau shall submit its feasibility study, including findings, recommendations, and any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2005.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 2004.)

ACT 135

H.B. NO. 2223

A Bill for an Act Relating to Boxing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 440-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

““Director” means the director of commerce and consumer affairs.

“Executive officer” means the executive officer assigned to the commission.

“Manager” means any person who:

(1) Undertakes or has undertaken to represent in any way the interest of any professional boxer in procuring, arranging, or conducting any professional contest in which the boxer is to participate as a contestant; provided that “manager” shall not include an attorney licensed to practice in this State while the attorney is representing the legal interest of a professional boxer as a client; or

(2) Directs or controls the boxing activities of the professional boxer.

“Professional boxing contest” or “boxing contest” is one in which a contestant boxes with or against another boxer for a money prize or purse or other form of compensation.”

SECTION 2. Section 440-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “amateur boxing contest” to read:

““Amateur boxing contest” is one in which no contestant has [received or will receive, directly or indirectly, any money, prize, reward, or compensation either for the expenses of training for the contest or for taking part therein,] boxed with or against a professional boxer or another amateur boxer for a money prize or purse, except as provided in this chapter.”

2. By amending the definition of “club” to read:

““Club” means a promoter, corporation, [organization, or association,] joint venture, partnership, limited liability corporation, limited liability partnership, or any other type of business entity that promotes, conducts, holds, or gives a boxing contest. The terms “club” and “promoter” are synonymous, and may be used interchangeably.”

3. By amending the definition of “professional boxer” to read:

““Professional boxer” is one who: competes for a money prize or purse[,] or other form of compensation; or teaches, pursues, or assists in the practice of boxing as a means of obtaining a livelihood or pecuniary gain.”

4. By repealing the definition of “secretary”.

[““Secretary” means the executive secretary to the state boxing commission.”]

SECTION 3. Section 440-2, Hawaii Revised Statutes, is amended to read as follows:

“§440-2 Commission established. There shall be a board which shall be known as the state boxing commission of Hawaii. The commission shall consist of five members. [One] At least one of the members shall be a member of [the Hawaiian association of an amateur athletic federation of the United States of America.] USA Boxing, Inc. One member shall be designated by the governor as chairperson of the commission.”

SECTION 4. Section 440-5, Hawaii Revised Statutes, is amended to read as follows:

“§440-5 Deputy commissioners. The director ~~[of commerce and consumer affairs]~~ may appoint ~~[and remove]~~ deputy commissioners~~[-];~~ provided that the director has the approval of the commission prior to any appointment. The director may remove deputy commissioners after consultation with the commission. The [boxing] commission may direct the deputy commissioner or deputy commissioners [or any one or more of them] to be present at any boxing contest and, in the absence of the commission or a member thereof, to superintend and control the boxing contest, in accordance with this chapter and the rules [passed] adopted by the commission pursuant thereto. The deputy commissioners shall make a written report to the [secretary] executive officer in the manner and form prescribed by the commission of the conditions prevailing at every contest.”

SECTION 5. Section 440-6, Hawaii Revised Statutes, is amended to read as follows:

“§440-6 ~~[Seal and rules.] Rules.~~ The ~~[boxing]~~ commission ~~[shall adopt a seal and]~~ may ~~[make,]~~ adopt, amend, and repeal rules [as] that it considers necessary or expedient for the conduct of its business and the regulation of the matters [herein] in this chapter committed to its charge. The rules when [prescribed in conformity with] adopted pursuant to chapter 91 shall have the force and effect of law.”

SECTION 6. Section 440-8, Hawaii Revised Statutes, is amended to read as follows:

“§440-8 Authority to subpoena witnesses, to administer oaths and penalties. The chairperson or the ~~[secretary]~~ executive officer may issue subpoenas for the attendance of witnesses before the ~~[boxing]~~ commission, with the same effect as if ~~[they]~~ the subpoenas were issued in an action in the circuit court, and may administer oaths in all matters connected with the administration of the affairs of the commission. Disobedience of a subpoena and false swearing before the ~~[secretary]~~ executive officer or the commission shall be attended by the same consequences and be subject to the same penalties as if disobedience or false swearing occurred in an action in the circuit court.”

SECTION 7. Section 440-8.5, Hawaii Revised Statutes, is amended to read as follows:

“§440-8.5 Powers and duties of the commission. In addition to any other powers and duties authorized by law, the commission shall adopt rules pursuant to chapter 91 to provide for the following:

- (1) ~~[A trust or escrow account system to ensure that all financial obligations are met by a promoter before a boxing contest. This system shall supersede all other financial obligatory requirements imposed on promoters by this chapter.]~~ An appropriate method of ensuring that all financial obligations are met by a promoter who conducts, holds, or gives a boxing contest;
- (2) A public record accounting for the distribution of all tickets provided to the commission by a promoter and anything else of value which is provided to the commission;

- (3) [An annual clinic or seminar on health and medical safety for boxers; Clinics or seminars on health and safety for licensees, as deemed necessary by the commission;
- (4) A mandatory neurological examination for any boxer who is knocked out in a boxing contest, and an eye examination as part of a boxer's annual medical examination; [and]
- (5) An automatic medical suspension from boxing for a period of time to be determined by the commission for any boxer who is knocked out from head blows or who has received a severe beating about the head. The period of time of the automatic medical suspension shall be based upon the severity of the beating received by the boxer[-];
- (6) Procedures to evaluate the professional records and physician's certification of each boxer participating in a professional boxing contest in the State and to deny authorization to a boxer to fight when the requirements of this paragraph are not met;
- (7) Procedures to ensure that no boxer is permitted to box while under suspension from any boxing commission due to:
 - (A) A recent knockout or series of consecutive losses;
 - (B) An injury, any required medical procedure, or a physician's denial of certification to box;
 - (C) Failure of any drug test; or
 - (D) The use of false aliases or falsifying or attempting to falsify official identification cards or documents relating to boxing;
- (8) Procedures to review a suspension if appealed by a boxer, including an opportunity for a boxer to present contradictory evidence;
- (9) Procedures to revoke a suspension if a boxer furnishes proof of sufficiently improved medical or physical condition or furnishes proof that the suspension was not, or is no longer, warranted by the facts; and
- (10) Establishing a boxing registry and the issuance of an identification card to boxers."

SECTION 8. Section 440-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No professional boxing contest shall take place unless the commission has approved all proposed bouts. In addition, the commission shall not allow any professional boxing contest unless:

- (1) The contestants use gloves not less than six ounces in weight;
- (2) The contest consists of not more than [fifteen] twelve rounds of a duration of not more than three minutes each with an interval of one minute between each round and the succeeding round;
- (3) Each contestant is at least eighteen years of age; [and]
- (4) One hour prior to the contest each contestant is examined by a licensed physician who shall certify in writing to the referee of the contest that the contestant is physically fit to engage therein[-];
- (5) The promoter has complied with sections 440-10 and 440-11; and
- (6) All participants have complied with the requirements provided in this chapter and rules adopted in accordance with chapter 91."

SECTION 9. Section 440-10, Hawaii Revised Statutes, is amended to read as follows:

"§440-10 Licenses, promoters. (a) Any individual~~[-, partnership, club, association, organization, or corporation]~~ or club may ~~[make application]~~ apply to the commission for a license to conduct, hold, ~~[and]~~ or give professional boxing

contests. The application shall be in writing, addressed to the commission, and signed by the applicant, or if the applicant is a club, ~~[association, organization, or corporation,]~~ by a duly authorized officer, partner, or member thereof, and shall include the following:

- (1) Evidence of financial integrity ~~[for an individual applicant, for each partner of a partnership or joint venture, or for each corporate entity or association to include a:~~
 - (A) ~~Current credit report covering a five-year period immediately preceding the date of application;~~
 - (B) ~~Current financial statement certified by a registered certified public accountant or a registered public accountant;~~
 - (C) ~~State tax clearance from the state department of taxation;]~~ in accordance with rules adopted by the commission pursuant to chapter 91; and
 - (2) ~~For corporations organized under the laws of the State, a copy of the affidavit of officers on file with the department of commerce and consumer affairs, or certificates of registration for foreign corporations and partnerships;~~
 - (3) ~~Proof that the applicant has contracted for medical insurance coverage for all boxers on the applicant's cards.]~~ (2) Proof that the applicant has currently satisfied all of the applicable requirements of the department's business registration division.
- (b) The application shall contain a recital of the facts as may be specified by the commission in order for it to determine whether or not the applicant possesses the necessary physical, mental, moral, and financial qualifications to entitle the applicant to a license.
- (c) The commission shall not issue any license to conduct, hold, or give boxing contests unless it is satisfied that the applicant has complied with the conditions of this chapter, possesses the necessary qualifications for a license, and is the real party in interest, and intends to conduct, hold, or give the contests or matches itself. The commission shall not issue a promoter's license to an applicant if the applicant or any of the applicant's officers, partners, members, or associates have been convicted of any crime related to gambling or a crime that is directly related to the person's performance in the sport of boxing.
- (d) A license may be revoked at any time if the commission finds after a hearing that: the licensee is not the real party in interest or ~~[does not comply with the conditions of this chapter.]~~ has not complied with this chapter or the rules of the commission; or the licensee or any of the licensee's officers, partners, members, or associates have been convicted of any crime related to gambling or a crime that is directly related to the person's performance in the sport of boxing.
- (e) Every license shall be subject to this chapter and the rules [as] of the commission [may prescribe]."

SECTION 10. Section 440-11, Hawaii Revised Statutes, is amended to read as follows:

"§440-11 [License fee; bond; requirements to maintain license.] Requirements to hold a boxing contest. (a) The application for a license to promote professional boxing contests ~~[or amateur boxing contests]~~ shall be accompanied by a fee as provided in rules adopted by the director ~~[of commerce and consumer affairs]~~ pursuant to chapter 91.

(b) ~~[Before any license is granted, the applicant shall file and maintain with the commission proof of medical insurance for boxers as provided in section 440-10(a)(3) and a bond in the sum of \$5,000 with good and sufficient sureties]~~

conditioned for the faithful performance by the applicant of this chapter. In case of default in the performance, the bond shall be forfeited and the full amount thereof, or any less amount as the commission may determine, shall be recovered by the attorney general in the name of the State and the amount so recovered shall be paid to any aggrieved party for monetary damages sustained as a result of the applicant's default in performance, as determined by the commission, with the remainder paid into the state treasury.

(e) For approval to conduct, hold, or give a boxing contest, a promoter shall provide proof of medical insurance for boxers in accordance with rules adopted by the commission. All promoters shall be responsible for paying any deductible amount of the medical insurance policy.

(c) Prior to each boxing contest, a promoter shall provide a bond, in an amount determined by the commission, to adequately cover the promoter's obligations in conducting, holding, or giving a boxing contest. The bond shall be executed by the promoter as principal and by a surety company authorized to do business in the State as the surety. If the promoter fails to pay any obligations covered by the bond, any aggrieved person may file an action against the bond to recover the amount owed, in the circuit court in the circuit in which the boxing contest was conducted, held, or given; provided that the aggregate liability of the surety to all aggrieved persons shall not exceed the amount of the bond. Any action against the bond shall be commenced within ninety days after the boxing contest was conducted, held, or given.

(d) Prior to any boxing contest, all contracts with managers, boxers, and venues, including any agreement of pre-contest training funds advanced to any contestant either by the promoter or manager or any party of interest, shall be submitted by the promoter to the commission for its review and approval.

(e) Prior to any boxing contest, the promoter shall submit to the commission, for its review and approval, all ring records of all boxers scheduled to participate in the contest.

(f) A promoter shall provide cashier's or certified checks made payable to each contestant for the amount due the contestant or the contestant's manager, as the case may be, in accordance with the contracts approved by the commission.

(g) A promoter shall provide to the commission written confirmation that an ambulance with paramedics and appropriate security have been obtained and will be present at all times at the venue of the boxing contest.

(h) Failure, refusal, or neglect of any licensed promoter [to maintain in full force and effect the applicable medical insurance or the applicable bond covered in this section shall cause the automatic suspension of the promoter's license as of the date of expiration or cancellation of the medical insurance or bond. A licensee may, within fifteen days after receipt of the notification of the license suspension, request an administrative hearing to review the suspension pursuant to chapter 91.

The commission shall not reinstate the affected license until satisfactory proof of medical insurance or bond coverage, as appropriate, is submitted to the commission. Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license to be terminated.

The commission may assess a fee not to exceed \$500 as a condition for the reinstatement of a license terminated pursuant to this section.] to comply with this section shall result in the automatic denial to hold the boxing contest.

(i) Licensed promoters may engage in promotions with other licensed promoters as long as each promoter holds a valid, unexpired license and has received the written approval of the commission prior to the promotion.

(j) No boxing contest shall be commenced without the approval of the commission pursuant to this section."

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SECTION 11. Section 440-12, Hawaii Revised Statutes, is amended to read as follows:

“§440-12 Licenses, participants. (a) Any individual~~[, partnership, or corporation]~~ may ~~[make application]~~ apply to the commission for a license to act as a physician, referee, judge, matchmaker, manager, timekeeper, second, or professional boxer to participate, either directly or indirectly, in any boxing contest. The application shall be in writing, addressed to the commission, and signed by the applicant ~~[or, if the applicant is a corporation, by a duly authorized officer thereof]~~. The application shall contain a recital of facts as may be specified by the commission in order for it to determine whether or not the applicant possesses the necessary physical, mental, and moral qualifications to entitle the applicant to a license. The commission shall adopt rules for licensure in accordance with chapter 91.

(b) In addition, the applicant for a referee, judge, manager, or second license shall take and pass a written examination as provided by the commission. The commission may exempt an applicant for a manager or second license from taking the examination, if the applicant holds a valid manager or second license in another jurisdiction with comparable boxing regulations.

(c) Any license to act as a physician, referee, judge, matchmaker, manager, timekeeper, second, or professional boxer may be suspended or revoked, or the person otherwise disciplined by the commission [upon cause as it deems sufficient after due] after a contested case hearing[-] held in accordance with chapter 91.”

SECTION 12. Section 440-13, Hawaii Revised Statutes, is amended to read as follows:

“§440-13 License fees. (a) License fees shall be paid annually to the State by every applicant to whom a license is issued to participate in the conduct of professional boxing in any of the capacities set forth in this ~~[section:]~~ chapter: promoter, physician, referee, judge, matchmaker, manager, timekeeper, second, and professional boxer. The charge for a duplicate of a license and all fees required by this chapter shall be as provided in rules adopted by the director ~~[of commerce and consumer affairs]~~ pursuant to chapter 91 and shall be deposited with the director ~~[of commerce and consumer affairs]~~ to the credit of the compliance resolution fund established pursuant to section 26-9(o).

(b) The director ~~[of commerce and consumer affairs]~~ may establish a schedule of license fees for participation in amateur boxing contests, and may waive payment of license fees for amateur boxing contests.”

SECTION 13. Section 440-14, Hawaii Revised Statutes, is amended to read as follows:

“§440-14 Licenses, limitations, renewals. (a) No boxing contest shall be conducted, held, or given unless all the parties participating, as designated herein, are licensed by the ~~[boxing]~~ commission, and it shall be unlawful for any ~~[person, partnership, or corporation]~~ individual or club to participate in a boxing contest in any capacity designated herein unless the person is licensed to do so.

(b) The commission may limit the number of licenses issued for any purpose as specified in this chapter and may limit the number of professional boxing contests conducted, held, or given in any city, town, or in the State.

(c) All licenses shall be for a period of not more than one year and all licenses shall expire on December 31 of the year in which the licenses are issued.

(d) The commission, at its discretion~~[, may]~~ and upon application, may renew the licenses for the following year. Failure to timely renew any license shall

result in the automatic forfeiture of the license. Any applicant whose license has been forfeited shall file an application for a new license and meet all current requirements, including successful passage of the examination, as the case may be, for the license.

(e) Every individual or club~~[-person, partnership, or corporation]~~ licensed under this chapter ~~[is]~~ shall be subject to the rules[-and amendments thereof, as adopted by the commission [may prescribe].

SECTION 14. Section 440-15, Hawaii Revised Statutes, is amended to read as follows:

“§440-15 Receipts and reports thereon. (a) Every ~~[person,]~~ individual or club~~[-corporation, organization, or association]~~ holding a license to conduct, hold, or give boxing contests ~~[shall]~~, within seventy-two hours after the determination of every boxing contest for which admission fees are charged and received, shall furnish to the ~~[boxing]~~ commission a written report, duly verified, showing the number of tickets sold for the contest ~~[and]~~, the amount of the gross receipts or proceeds thereof, and other matters as the commission prescribes.

(b) For ~~[the purpose]~~ purposes of this section, “gross receipts” include income received from the sale of print, internet, broadcasting, television, and motion picture rights.”

SECTION 15. Section 440-16, Hawaii Revised Statutes, is amended to read as follows:

“§440-16 Failure to report receipts. Whenever any ~~[person,]~~ individual or club~~[-corporation, organization, or association]~~ holding a license to conduct, hold, or give boxing contests fails to make a report of any boxing contest at the time and in the manner herein prescribed, or whenever the report is unsatisfactory to the commission, the ~~[secretary,]~~ executive officer, at the licensee’s expense, may examine, or cause to be examined, the books and records of the ~~[person,]~~ individual or club[-corporation, organization, or association].”

SECTION 16. Section 440-18, Hawaii Revised Statutes, is amended to read as follows:

“§440-18 Inspectors; duties. The ~~[director of commerce and consumer affairs]~~ commission shall ~~[employ]~~ appoint official representatives designated as inspectors, each of whom shall receive from the ~~[boxing]~~ commission a card or badge authorizing the person to act as inspector whenever the commission may designate the person to so act. An inspector or the ~~[secretary]~~ executive officer shall be present at all professional boxing contests and see that this chapter and the rules are strictly observed ~~[and shall also be present at the counting of the gross receipts or proceeds of all boxing contests,]~~ and ~~[shall]~~, as soon as practicable thereafter, shall mail or deliver to the commission the official box office statement received by the inspector or ~~[secretary,]~~ executive officer.”

SECTION 17. Section 440-19, Hawaii Revised Statutes, is amended to read as follows:

“§440-19 Referees; duties. (a) At each boxing contest there shall be in attendance a duly licensed referee designated by the commission, who shall direct and control the contest. Before starting the boxing contest, the referee shall ascertain from each contestant the name of the contestant’s chief second~~[-]~~ and shall hold the

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chief second responsible for the conduct of the assistant seconds during the progress of the contest.

(b) The referee may recommend and the commission may in its discretion declare ~~[forfeited]~~ the forfeiture of any prize, purse, or remuneration, or any part thereof, to which the contestants or one of the contestants may be entitled, or any part of the gate receipts for which the contestants are competing, if in ~~[its]~~ the commission's judgment the contestants or one of the contestants are not honestly competing.

(c) Every referee shall warn competing boxers of the referee's power to recommend the forfeiture of purse or purses, should there be any apparent cause for the warning.

(d) In any case where the referee decides that the contestants are not honestly competing and that under the law the contestants' purses or the purse of either contestant should be forfeited, the bout shall be stopped before the end of the last round, and no decision shall be given. A contestant earns nothing and shall not be paid for a contest in which there is stalling, faking, dishonesty, or collusion. The commission ~~[may]~~, independently of the referee or the referee's decision, may determine the merits of any contest~~;~~ and take whatever action it considers proper. In any case the ~~[secretary]~~ executive officer or any commissioner may order the purse of the offender held up for investigation and action.

(e) The referee shall stop the contest when either of the contestants shows a marked superiority or is apparently outclassed. The referee, at the termination of each boxing contest, shall render a decision."

SECTION 18. Section 440-21, Hawaii Revised Statutes, is amended to read as follows:

"§440-21 Physician; duties. Every ~~[person,]~~ individual or club~~[-corporation, organization, or association]~~ holding a license to conduct, hold, or give boxing contests shall have in attendance at every boxing contest~~[-, a physician]~~ at least two physicians licensed to practice medicine in the State and duly licensed hereunder, who shall observe the physical condition of the contestants and advise the referee with regard thereto~~;~~ and, one hour before each contestant enters the ring, certify in writing as to the physical condition of the contestant to engage in the boxing contest. A report of the medical examination shall be filed with the ~~[boxing]~~ commission not later than twenty-four hours after the termination of the boxing contest. In addition, at least one physician shall immediately examine every contestant who was knocked down or who sustained a severe beating about the head during the contest and shall file a written medical opinion within twenty-four hours of the contest to the executive officer."

SECTION 19. Section 440-22, Hawaii Revised Statutes, is amended to read as follows:

"§440-22 Sham boxing contest; forfeiture of license. Any ~~[person,]~~ individual or club~~[-corporation, organization, or association]~~ who conducts, holds, or gives or participates in any sham or fake boxing contest, knowing the same to be a sham or fake, shall forfeit the license issued in accordance with this chapter, and the ~~[same]~~ license shall ~~[thereupon]~~ be canceled and declared void by the ~~[boxing]~~ commission. The ~~[person,]~~ individual or club~~[-corporation, organization, or association]~~ and any officers, partners, or members of the club shall not thereafter be entitled to receive and shall not be given another license."

SECTION 20. Section 440-24, Hawaii Revised Statutes, is amended to read as follows:

“§440-24 Number of rounds. The [boxing] commission [may], [in] with respect to any [bout] boxing contest or [in] with respect to any class of contestants, may limit the number of rounds of a [bout] boxing contest within the maximum of [fifteen] twelve rounds.”

SECTION 21. Section 440-27, Hawaii Revised Statutes, is amended to read as follows:

“§440-27 Financial interest in contestant prohibited. ~~[No person, club, corporation, organization, or association holding a license to conduct, hold, or give boxing contests nor any member or stockholder thereof, shall have, either directly or indirectly, any financial interest in any contestant competing in any boxing contest which it may conduct, hold, or give.]~~ (a) No commission member or staff, appointee, or any individual or club holding a license to conduct, hold, or give boxing contests, nor any officer, partner, or member, may receive any compensation from any person who sanctions, arranges, or promotes professional boxing contests; nor shall they have, either directly or indirectly, any financial interest in any contestant competing in any boxing contest that they conduct, hold, or give.

(b) For purposes of this section, the term “compensation” shall not include funds held in escrow for payment to another person in connection with a professional boxing contest. The prohibition set forth in this section shall not apply to any contract entered into, or any reasonable compensation received, by the commission to supervise a professional boxing contest in this State or another state.”

SECTION 22. Section 440-34, Hawaii Revised Statutes, is amended to read as follows:

“§440-34 Violations; penalty. Any ~~[person, partnership, or corporation]~~ individual or club in violation of this chapter ~~or the rules of the commission~~ shall be fined not more than ~~[\$500] \$5,000 for each violation~~ or imprisoned not more than one year, or both.”

SECTION 23. Section 440-35, Hawaii Revised Statutes, is amended to read as follows:

“§440-35 Not to apply to army, air force, navy, national guard, or police activities league. This chapter shall not apply to any boxing contest held as a recreational activity by army, air force, navy, or national guard personnel, or the police activities league, when the contest is held under the supervision of a recreational officer of the army, air force, navy, or national guard, or a police activities league staff member~~;~~ provided that no contest shall be held in any place subject to the jurisdiction of the boxing commission unless the commission has first granted a license to hold the same, for which license no fee shall be charged.”

SECTION 24. Section 440-36, Hawaii Revised Statutes, is amended to read as follows:

“§440-36 Revocation; suspension; fine. (a) In addition to any other actions authorized by law, the commission shall have the power to revoke or suspend the license of any ~~[person, partnership, or corporation]~~ individual or club licensed under

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any of the classifications designated in this chapter, or fine the licensee, or both, for any cause authorized by law, including but not limited to the following:

- (1) Violation of any provision of this chapter or the rules adopted pursuant thereto or any other law, or rule that applies to those persons licensed under this chapter;
 - (2) Manifest incapacity, professional misconduct, or unethical conduct;
 - (3) Making any false representations or promises through advertising or other dissemination of information;
 - (4) Any fraudulent, dishonest, or deceitful act in connection with the licensing of any ~~[person, partnership, or corporation]~~ individual or club under this chapter or in connection with any boxing ~~[match;]~~ contest;
 - (5) Making any false or misleading statement in any application or document submitted or required to be filed ~~[in]~~ under this chapter;
 - (6) Revocation or suspension of a license or other disciplinary action against the licensee by another state or boxing commission; ~~[or]~~
 - (7) Failure to report any disciplinary action, including medical and mandatory suspensions, or revocation or suspension of a license in another jurisdiction within fifteen days preceding any boxing match in which the licensee participates~~[-];~~ or
 - (8) Participation in any sham or false boxing contest.
- (b) The manager and second may be held responsible for all violations of this chapter by a boxer whom they manage, second, train, or serve as an agent for and may be subject to license revocation or suspension, or a fine, or any combination thereof, irrespective of whether any disciplinary action is taken against the boxer.
- (c) Any ~~[person, partnership, or corporation]~~ individual or club in violation of this chapter shall be fined not more than ~~[\$1,000]~~ \$5,000 for each violation.
- (d) In addition to the penalties provided in this chapter, any ~~[person, partnership, or corporation]~~ individual or club found in violation of any of the above may be prohibited from engaging in any boxing activities in the State for a period in conformity with that set forth in section 92-17.”

SECTION 25. Section 440-25, Hawaii Revised Statutes, is repealed.

SECTION 26. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 27. This Act shall take effect upon its approval.

(Approved June 21, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 136

H.B. NO. 2143

A Bill for an Act Relating to Business Regulation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 481B-13, Hawaii Revised Statutes, is amended to read as follows:

“**§481B-13 Gift certificates.** (a) Any restaurant or person engaged in the business of offering services or goods for sale at retail may allow customers to

purchase gift certificates; provided that the certificate issuer shall honor the certificate for a period of at least two years from the date of issuance. A certificate issuer shall not charge a service fee, including but not limited to a service fee for dormancy or inactivity.

(b) ~~[A certificate issuer shall include the expiration date on the face of any gift certificate that has an expiration date.]~~ The date of issuance and the expiration date shall be clearly identified on the face of the gift certificate, or, if an electronic card with a banked dollar value, clearly printed upon a sales receipt transferred to the purchaser of the electronic card upon the completed transaction. The expiration date shall be not less than two years after the date of issuance. If the gift certificate does not have an expiration date, it shall be valid in perpetuity.

(c) Gift certificates that are issued as part of an awards, loyalty, or promotional program, or to a not-for-profit charity organization, where no money or anything of value is given to the issuer by the consumer in exchange for the gift certificate, are exempt from this section; provided that the expiration date, if any, appears on the gift certificate or accompanying printed receipt.

~~[(e)] (d)~~ Any violation of ~~[subsection (a) or (b)]~~ this section shall constitute an unfair and deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.

~~[(d)] (e)~~ As used in this section, unless the context requires otherwise:

“Certificate issuer” or “issuer” means a restaurant or a person engaged in the business of offering services or goods for sale at retail who sells gift certificates to customers.

“Gift certificate” or “certificate” includes any ~~[writing for which the]~~ electronic card with a banked dollar value where the issuer has received payment for the full banked dollar value for the future purchase or delivery of goods or services, any certificate where the issuer has received payment for the full face value of the certificate for future purchases or delivery of goods or services~~[-]~~, and any other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, or services of at least an equal value.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2005.

(Approved June 21, 2004.)

ACT 137

H.B. NO. 2645

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Substitute teachers are a valuable resource to the department of education. The legislature finds that the department needs to encourage qualified people to serve as substitute teachers. One such group of qualified people is teachers retired from the department of education who hold a teaching license, who should be especially encouraged to serve, since they would bring current licenses and a wealth of practical experience to their work. One impediment to their recruitment, however, is the stipulation that all substitute teachers must take a thirty-hour substitute teacher course at their own expense.

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The purpose of this Act is to exempt licensed retired teachers from any prerequisite coursework that the department may require of other substitute teachers for a period not exceeding ten years after the date of their retirement.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Retired teachers; coursework waiver; substitute teachers. Retired department teachers who held a valid teaching certificate or license at the date of their retirement shall be exempt from any prerequisite coursework that the department requires of other substitute teachers for a period of ten years after the date of their retirement.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 21, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 138

H.B. NO. 1710

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Scholarships for students to enroll at the University of Hawaii are essential to advance the university's mission of access, academic excellence, diversity, and service to the state. Currently, the University of Hawaii gives most of its assistance in the form of tuition waivers by which a credit towards tuition is given to students. Most universities, however, give assistance in the form of scholarships. A student scholarship and assistance special fund will provide the university with a mechanism to administer tuition and scholarship assistance systemwide and, where appropriate, obtain additional scholarship support or matching funds, or both, from state, federal, institutional, and private sources. The student scholarship and assistance fund is established for the purposes of:

- (1) Assisting the University of Hawaii in the transition from tuition waivers to scholarship funding to be consistent with nationwide practices;
- (2) Directing state initiatives, such as scholarships for teachers, nurses, and other high-demand fields, through this fund;
- (3) Developing programs to provide assistance systemwide and by individual campuses; and
- (4) Enabling the University of Hawaii to perform comprehensive reporting on student assistance, including information on tuition waivers, institutional support, state support, and private contributions.

Currently, student assistance is disbursed by campus and department, and record-keeping is performed by compiling the disbursed reports. Centralizing the transactions will make reporting faster and more accurate.

The purpose of this Act is to:

- (1) Establish a student scholarship and assistance special fund within the University of Hawaii; and

- (2) Appropriate \$20,000,000 out of the student scholarship and assistance special fund for fiscal year 2004-2005 to be used for scholarship assistance.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- Student scholarship and assistance special fund. (a) There is established the student scholarship and assistance special fund to be administered by the University of Hawaii. This fund shall be used to provide financial assistance to qualified students enrolled at any campus of the University of Hawaii.

(b) Revenues deposited into this fund shall include but not be limited to state, federal, and private funds, and funds transferred by the university from the tuition and fees special fund pursuant to section 304-16.5.

(c) The board of regents, or its designated representatives, is authorized to grant, modify, or suspend scholarship and assistance funds. The University of Hawaii shall report annually to the legislature on the sources of revenue into and expenditures made from the special fund no later than twenty days before the convening of each regular session of the legislature. This report shall include but not be limited to the number of tuition waivers, scholarships, and stipends.

(d)¹ This fund is not intended to provide loans or keep track of payback provisions.”

SECTION 3. Section 304-16.5, Hawaii Revised Statutes, is amended to read as follows:

“§304-16.5 University of Hawaii tuition and fees special fund; tuition schedule and waivers. (a) There is established the University of Hawaii tuition and fees special fund, into which shall be deposited all revenue collected by the university for regular, summer, and continuing education credit tuition, ~~[tuition related]~~ tuition-related course and fee charges, and any other charges to students, except as provided by law. Moneys deposited into the fund shall be expended to maintain or improve the university’s programs and operations and shall not be:

- (1) Used as a justification for reducing any budget request or allotment to the University of Hawaii unless the university requests such a reduction;
- (2) Transferred unless otherwise authorized by the legislature; and
- (3) Restricted by the governor or the director of finance without the prior approval of the legislature.

Any rule, policy, or action of any agency or individual in contravention of this subsection shall be void as against public policy.

(b) The board of regents, or its designated representatives, is authorized to grant, modify, or suspend tuition waivers. The board of regents shall provide a report and make recommendations as appropriate to the legislature on all tuition waivers no later than twenty days prior to the convening of each regular session. This report shall include but not be limited to the number of tuition waivers ~~[and]~~, scholarships, stipends, and mandatory fees granted to financially needy students from ethnic groups that are under-represented in the student population of the University of Hawaii through the Hawaii opportunity program in education.

(c) Any law to the contrary notwithstanding, the board of regents may authorize expenditures from this fund for the purpose of generating private donations for deposit into the University of Hawaii Foundation for the purposes of the university. Any expenditure authorized pursuant to this subsection shall be for a public purpose and shall not be subject to chapters 42F, 103, 103D, and 103F. The

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university shall submit a comprehensive report to the legislature every regular session detailing the use of any funds authorized by the board under this subsection.

(d) Any law to the contrary notwithstanding, the university may transfer funds from the tuition and fees special fund into the student scholarship and assistance special fund established pursuant to section 304- .”

SECTION 4. There is appropriated out of the student scholarship and assistance special fund the sum of \$20,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 to carry out the purposes of this Act.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 6. This Act shall take effect on July 1, 2004.

(Approved June 21, 2004.)

Notes

1. Subsection “(d)” substituted for “(e)”.

2. Edited pursuant to HRS §23G-16.5.

ACT 139

H.B. NO. 1944

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 136, Session Laws of Hawaii 2000, is amended by amending section 5 to read as follows:

“SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [2004-] 2009.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 2004.

(Approved June 22, 2004.)

ACT 140

S.B. NO. 3207

A Bill for an Act Relating to Ethanol Tax Credit.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to encourage the construction of operating, large-capacity ethanol production facilities by changing the ethanol investment tax credit to a facility tax credit. Second, this Act also clarifies that this tax credit shall not exceed the amount invested in the qualifying ethanol production

facility. Third, this Act clarifies the credit may be claimed in a year that the production of ethanol, on an annualized basis is equal to at least seventy-five per cent of the nameplate capacity of the facility. Fourth, the definition of "investment" is clarified. And last, because this credit offers a tax benefit that is both substantial and refundable, this Act also prohibits a taxpayer from claiming or receiving any other tax credit under chapter 235, Hawaii Revised Statutes, relating to the development of the qualifying ethanol production facility for any taxable year in which this credit is claimed.

SECTION 2. Section 235-110.3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§235-110.3**~~]]~~ **Ethanol [investment] facility tax credit.** (a) Each year during the credit period, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an ethanol [investment] facility tax credit that shall be applied to the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. ~~[The maximum annual credit allowable for the investment in a qualified ethanol facility that is in production on or before January 1, 2012, subject to subsection (e), shall be determined in accordance with the following schedule:~~

- (1) ~~If nameplate capacity is at least 500,000 but not over 1,000,000, the investment tax credit is the lesser of thirty per cent of the investment, or \$150,000;~~
- (2) ~~If nameplate capacity is over 1,000,000, but not over 2,000,000, the investment tax credit is the lesser of thirty per cent of the investment, or \$300,000;~~
- (3) ~~If nameplate capacity is over 2,000,000, but not over 3,000,000, the investment tax credit is the lesser of thirty per cent of the investment or \$600,000;~~
- (4) ~~If nameplate capacity is over 3,000,000, but not over 4,000,000, the investment tax credit is the lesser of thirty per cent or \$900,000;~~
- (5) ~~If nameplate capacity is over 4,000,000, but not over 5,000,000, the investment tax credit is the lesser of thirty per cent or \$1,200,000;~~
- (6) ~~If nameplate capacity is over 5,000,000, but not over 6,000,000, the investment tax credit is the lesser of thirty per cent or \$1,500,000;~~
- (7) ~~If nameplate capacity is over 6,000,000, but not over 7,000,000, the investment tax credit is the lesser of thirty per cent or \$1,800,000;~~
- (8) ~~If nameplate capacity is over 7,000,000, but not over 8,000,000, the investment tax credit is the lesser of thirty per cent or \$2,100,000;~~
- (9) ~~If nameplate capacity is over 8,000,000, but not over 9,000,000, the investment tax credit is the lesser of thirty per cent or \$2,400,000;~~
- (10) ~~If nameplate capacity is over 9,000,000, but not over 10,000,000, the investment tax credit is the lesser of thirty per cent or \$2,700,000;~~
- (11) ~~If nameplate capacity is over 10,000,000, but not over 11,000,000, the investment tax credit is the lesser of thirty per cent or \$3,000,000;~~
- (12) ~~If nameplate capacity is over 11,000,000, but not over 12,000,000, the investment tax credit is the lesser of thirty per cent or \$3,300,000;~~
- (13) ~~If nameplate capacity is over 12,000,000, but not over 13,000,000, the investment tax credit is the lesser of thirty per cent or \$3,600,000;~~
- (14) ~~If nameplate capacity is over 13,000,000, but not over 14,000,000, the investment tax credit is the lesser of thirty per cent or \$3,900,000;~~
- (15) ~~If nameplate capacity is over 14,000,000, but not over 15,000,000, the investment tax credit is the lesser of thirty per cent or \$4,200,000; and~~

- (16) ~~If nameplate capacity is over 15,000,000, the investment tax credit is the lesser of thirty per cent or \$4,500,000.]~~

For each qualified ethanol production facility, the annual dollar amount of the ethanol facility tax credit during the eight-year period shall be equal to thirty per cent of its nameplate capacity if the nameplate capacity is greater than five hundred thousand but less than fifteen million gallons. A taxpayer may claim this credit for each qualifying ethanol facility; provided that:

- (1) The claim for this credit by any taxpayer of a qualifying ethanol production facility shall not exceed one hundred per cent of the total of all investments made by the taxpayer in the qualifying ethanol production facility during the credit period;
- (2) The qualifying ethanol production facility operated at a level of production of at least seventy-five per cent of its nameplate capacity on an annualized basis;
- (3) The qualifying ethanol production facility is in production on or before January 1, 2012; and
- (4) No taxpayer that claims the credit under this section shall claim any other tax credit under this chapter for the same taxable year.

(b) As used in this section:

"Credit period" means a maximum period of eight years [for facilities with a total investment of less than \$50,000,000, and, a maximum period of ten years for facilities with a total investment equal to or greater than \$50,000,000,] beginning from the first taxable year in which the [credit is properly claimed.] qualifying ethanol production facility begins production even if actual production is not at seventy-five per cent of nameplate capacity.

"Investment" means a nonrefundable capital expenditure [directly] related to the development and construction of any qualifying ethanol production facility, [exclusive of land costs,] including processing equipment, waste treatment systems, pipelines, and liquid storage tanks at the facility or remote locations, including expansions or modifications. Capital expenditures shall be those direct and certain indirect costs determined in accordance with section 263A of the Internal Revenue Code, relating to uniform capitalization costs, but shall not include expenses for compensation paid to officers of the taxpayer, pension and other related costs, rent for land, the costs of repairing and maintaining the equipment or facilities, training of operating personnel, utility costs during construction, property taxes, costs relating to negotiation of commercial agreements not related to development or construction, or service costs that can be identified specifically with a service department or function or that directly benefit or are incurred by reason of a service department or function. For the purposes of determining a capital expenditure under this section, the provisions of section 263A of the Internal Revenue Code shall apply as it read on March 1, 2004. For purposes of this section, investment excludes land costs and includes any investment for which the taxpayer is at risk, as that term is used in section 465 of the Internal Revenue Code (with respect to deductions limited to amount at risk).

["Maximum annual credit allowable" means the total credit allowed under subsection (a) claimed against the taxpayer's net income tax liability for any taxable year; provided that the qualifying ethanol facility operated in such taxable year at a level of production of at least seventy-five per cent of its nameplate capacity on an annualized basis.]

"Nameplate capacity" means the qualifying ethanol production facility's production design capacity, in gallons of motor fuel grade ethanol per year[, based on an assumed operating year of three hundred fifty days].

"Net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

“Qualifying ethanol production” means ethanol produced from renewable, organic feedstocks, or waste materials, including municipal solid waste. All qualifying production shall be fermented, distilled, gasified, or produced by physical chemical conversion methods such as reformation and catalytic conversion and dehydrated at the facility.

“Qualifying ethanol production facility” or “facility” means a facility located in Hawaii which produces motor fuel grade ethanol meeting the minimum specifications by the American Society of Testing and Materials standard D-4806, as amended.

(c) In the case of a taxable year in which the cumulative claims for the credit by the taxpayer of a qualifying ethanol production facility exceeds the cumulative investment made in the qualifying ethanol production facility by the taxpayer, only that portion that does not exceed the cumulative investment shall be claimed and allowed.

(d) The department of business, economic development, and tourism shall:

- (1) Maintain records of the total amount of investment made by each taxpayer in a facility;
- (2) Verify the amount of the qualifying investment;
- (3) Total all qualifying and cumulative investments that the department of business, economic development, and tourism certifies; and
- (4) Certify the total amount of the tax credit for each taxable year and the cumulative amount of the tax credit during the credit period.

Upon each determination, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying the qualifying investment amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer’s tax return with the department of taxation. Notwithstanding the department of business, economic development, and tourism’s certification authority under this section, the director of taxation may audit and adjust certification to conform to the facts.

If in any year, the annual amount of certified credits reaches \$12,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the total amount of certified credits exceed \$12,000,000 per year. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.

[(e)] (e) If the credit under this section exceeds the taxpayer’s income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payments on account of the tax credit allowed by this section shall be made for amounts less than \$1. All claims for a credit under this section must be properly filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

[(d)] (f) If a qualifying ethanol production facility or an interest therein is acquired by a taxpayer prior to the expiration of the credit period, the credit allowable under subsection (a) for any period after such acquisition shall be equal to the [maximum annual] credit [allowable and credit period] that would have been allowable under subsection (a) to the prior [owner] taxpayer had the [owner] taxpayer not disposed of the interest. If an interest is disposed of during any year for which the credit is allowable under subsection (a), the credit shall be allowable between the parties on the basis of the number of days during the year the interest was held by each [owner.] taxpayer. In no case shall the credit allowed under subsection (a) be allowed after the expiration of the credit period.

~~[(e)]~~ (g) Once the total nameplate capacities of qualifying ethanol production facilities built within the State reaches or exceeds a level of forty million gallons per year, ~~[no new ethanol investments or]~~ credits under this section shall not be allowed for new ethanol production facilities ~~[shall be allowed to begin claiming credits under this section]~~. If a new facility's production capacity would cause the statewide ethanol production capacity to exceed forty million gallons per year, only the ~~[portion of the investment corresponding to]~~ ethanol production capacity that does not exceed the statewide forty million gallon per year level shall be eligible for the credit.

~~[(f)]~~ (h) Prior to construction of any new qualifying ethanol production facility, the ~~[producer]~~ taxpayer shall provide written notice of the ~~[producer's]~~ taxpayer's intention to begin construction of a qualifying ethanol production facility. The information shall be provided to the department of taxation and the department of business, economic development, and tourism on forms provided by the department of business, economic development, and tourism, and shall include information on the ~~[facility owner,]~~ taxpayer, facility location, facility production capacity, anticipated production start date, and the ~~[facility owner's]~~ taxpayer's contact information. [This] Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination[.] under chapter 92F.

~~[(g) A qualifying ethanol producer]~~ (i) The taxpayer shall provide written notice to the director of taxation and the director of business, economic development, and tourism within thirty days ~~[of the initial qualifying]~~ following the start of production. The notice shall include the production start date and expected [qualifying] ethanol fuel production for the next twenty-four months. [This] Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.¹

~~[(h)]~~ (j) If a qualifying ethanol production facility fails to achieve an average annual production of at least seventy-five per cent of its nameplate capacity for two consecutive years, the stated capacity of that facility may be revised by the director of ~~[taxation]~~ business, economic development, and tourism to reflect actual production for the purposes of determining statewide production capacity under subsection ~~[(e)]~~ (g) and allowable ~~[investment]~~ credits for that facility under subsection (a). Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.

~~[(i)]~~ (k) Each calendar year during the credit period, ~~[each qualifying producer]~~ the taxpayer shall provide information to the director of business, economic development, and tourism on the number of gallons of ethanol produced and sold during the previous calendar year, how much was sold in Hawaii versus overseas, feedstocks used for ethanol production, the number of employees of the facility, and the projected number of gallons of ethanol production for the succeeding year.

(l) In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every qualifying ethanol production facility. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

~~[(j)]~~ (m) Following each year in which a credit under this section has been claimed, the director of business, economic development, and tourism shall submit a written report to the governor and legislature regarding the production and sale of ethanol. The report shall include:

- (1) The number, location, and nameplate capacities of qualifying ethanol production facilities in the State;
- (2) The total number of gallons of ethanol produced and sold during the previous year; and
- (3) The projected number of gallons of ethanol production for the succeeding year.

~~[(k)]~~ (n) The director of taxation shall prepare forms that may be necessary to claim a credit under this section. Notwithstanding the department of business, economic development, and tourism's certification authority under this section, the director may audit and adjust certification to conform to the facts. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004 and shall apply to taxable years beginning after December 31, 2003.

(Approved June 22, 2004.)

Note

1. Period should not be underscored.

ACT 141

H.B. NO. 2137

A Bill for an Act Relating to a One Call Center.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter, to be appropriately designated and to read as follows:

**"CHAPTER
ONE CALL CENTER**

§ -1 Administration; governing provisions of other acts. This chapter shall be administered by the public utilities commission and the provisions of this chapter and of chapter 269, not inconsistent with this chapter, shall govern its administration; provided that sections 269-7.5, 269-8.2, 269-8.5, 269-9, 269-16 to 269-28, 269-30, 269-31, 269-34 to 269-43, and 269-71 to 269-111 shall not, in any respect, apply to the one call center.

§ -2 Definitions. As used in this part, unless the context clearly requires otherwise:

"Agency" means any state or county department, commission, board, bureau, office, or other establishment of the state or county government or semi-autonomous part thereof.

"Approximate location of subsurface installation" means a strip of land not more than thirty inches on either side of the exterior surface of the subsurface installation, and does not refer to the depth of the subsurface installation.

"Center" means the one call center.

"Commission" means the public utilities commission.

"Committee" means the one call center advisory committee.

"Damage" means:

- (1) The substantial weakening of the structural or lateral support of a subsurface installation;
- (2) The penetration or destruction of any protective coating, housing, or other protective device of a subsurface installation; or

(3) The partial or complete severance of a subsurface installation.

“Demolition” means the wrecking, razing, rendering, movement, or removal of a structure or mass of material by means of tools, equipment, or the placement and discharge of explosives.

“Emergency” means a sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services.

“Excavation” means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives, including but not limited to the following: grading, trenching, digging, ditching, boring, drilling, auguring, tunneling, scraping cable or pipe plowing and driving, demolition, and dredging. “Excavation” shall not include any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives as part of improving an existing principal place of residence for one or two families, or improving or constructing an appurtenance thereto, on a parcel of land two acres or less in size, zoned for residential use, which is used or occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families.

“Excavator” means any person, including an operator, who performs any excavation, other than an operator whose employees are performing maintenance work on the operator’s subsurface installation.

“Inquiry identification number” means the number issued by the center to every excavator who contacts the center for the purpose of excavating.

“One call center” means a private provider selected by the commission pursuant to section -5 that provides advance warning to excavators of the location of subsurface installations in the area of an excavation for the purpose of protecting those installations from damage.

“Operator” means any person who owns, operates, or maintains a subsurface installation.

“Person” means any individual, firm, joint venture, partnership, corporation, association, agency, cooperative or joint stock association, contractor, subcontractor, operator, or other entity.

“Subsurface installation” means any pipeline, conduit, cable, duct, wire, sewer line, storm drain, vault, or other structure that is located underground.

“Working day” means every day from 7:00 a.m. to 5:00 p.m., except Saturday, Sunday, or any federal or state holiday.

§ -3 General duties and powers of the commission. The general duties and powers of the commission shall be to:

- (1) Establish and administer a one call center that provides advance warning to excavators in this state of the location of subsurface installations in the area of an excavation for the purpose of protecting those installations from damage;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91 as it may deem necessary to effectuate this chapter. The rules adopted shall have the force and effect of law and may include but are not limited to rules that:
 - (A) Forbid acts or practices deemed by the commission to be detrimental to the accomplishment of the purposes of this chapter; and
 - (B) Require operators and excavators to make reports to the commission containing information that will enable the commission to improve the accomplishment of this chapter;
- (3) Enforce this chapter and any rules adopted pursuant thereto;

- (4) Issue binding interpretations or declaratory rulings, and conduct contested case proceedings pursuant to chapter 91; and
- (5) Subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic and electronic communications.

§ -4 **One call center advisory committee.**¹ The commission shall establish a one call center advisory committee as a governmental entity as defined under chapter 662D to advise the commission in implementing this chapter. The committee shall consist of fifteen voting members and one ex officio nonvoting member. Of the voting members:

- (1) Nine shall be appointed by the commission to serve until successors are appointed by the commission. The appointments shall be as follows:
 - (A) One from the gas utility industry;
 - (B) One from the electric utility industry;
 - (C) One from the telecommunications utility industry;
 - (D) One from the pipeline operator industry;
 - (E) Two from the General Contractors Association of Hawaii;
 - (F) Two from the Building Industry Association of Hawaii; and
 - (G) One from the cable service industry;
- (2) One shall be the representative of the city and county of Honolulu designated by the mayor of the city and county of Honolulu;
- (3) One shall be the representative of the county of Hawaii designated by the mayor of the county of Hawaii;
- (4) One shall be the representative of the county of Maui designated by the mayor of the county of Maui;
- (5) One shall be the representative of the county of Kauai designated by the mayor of the county of Kauai;
- (6) One shall be the director of the state department of transportation, or the director's representative; and
- (7) One shall be the executive director of the division of consumer advocacy, department of commerce and consumer affairs, or the executive director's representative.

A representative of the center shall serve as an ex officio nonvoting member of the committee.

- (b) No member shall receive any compensation for the member's services.
 - (c) The committee shall advise the commission on:
 - (1) The establishment of rules;
 - (2) The setting of appropriate fees and assessments for the administration and operation of the center;
 - (3) The selection of the center provider;
 - (4) The enforcement of this chapter; and
 - (5) Other aspects regarding the establishment and operation of the center;
- provided that the committee shall not advise the commission in the exercise of the commission's quasi-judicial, adjudicatory functions, or participate in the commission's deliberations. The committee shall be exempt from chapter 92.

§ -5 **One call center established.** (a) By January 1, 2006, the commission shall establish and begin administration of a one call center that provides advance warning to excavators in this state of the location of subsurface installations in the area of an excavation for the purpose of protecting those installations from damage. In establishing the center, the commission shall consider the availability of experienced center providers. The commission shall award administration of the center to the provider the commission determines to be best qualified to provide center

services. In reviewing a provider's qualifications, the commission shall consider cost, quality of service, experience, and other factors the commission deems appropriate.

(b) Pursuant to rules adopted by the commission, all operators shall furnish to the center information relating to subsurface installations that the center may use to identify operators known to have subsurface installations in the area of a proposed excavation; provided that operators shall not be required to furnish to the center information relating to subsurface installations that are deemed confidential or proprietary.

§ -6 One call center financing. (a) To finance the establishment and operation of the center and the administrative costs of the commission, operators shall pay to the commission a fee in an amount and at a schedule determined by the commission. The commission may also assess fees on excavators. All fees paid by operators and excavators shall be deposited with the director of finance to the credit of the public utilities commission special fund.

(b) All operators of subsurface installations in this state shall share in the operational and administrative costs of the center, except where:

- (1) All of the operator's subsurface installations are located on property owned exclusively by that operator; and
- (2) The operator has not authorized another operator to use the property for any subsurface installation.

(c) The commission may accept revenues, compensations, proceeds, charges, penalties, grants, or any other payments in any form, from any public agency or any other source.

(d) Any agency required to participate may charge a reasonable fee in an amount sufficient to cover the administrative and operational costs required by this chapter.

(e) Civil penalties collected pursuant to this chapter shall be used by the commission to educate the operating and excavating community in Hawaii and to reduce the center's operating costs.

(f) Any operator or excavator that pays public utility fees to the commission pursuant to section 269-30 may petition the commission for approval to apply a portion of its public utility fee payments as a credit toward its center fees.

§ -7 Notification of excavation; inquiry identification number. (a) Except in an emergency, every excavator planning to conduct an excavation on public or private property shall notify the center of the excavation at least five working days but not more than twenty-eight calendar days prior to commencing excavation. The excavator shall provide to the center a description of the excavation site that includes the county, place, and address or description of where the excavation will take place, including but not limited to the nearest intersecting street, side of street, footages, or other tie-in measurements as needed. An excavator need not contact the center if the excavation is:

- (1) On private property that is owned exclusively by the excavator; and
- (2) No operator has been authorized to use the property for any subsurface installation.

(b) The center shall provide an inquiry identification number to an excavator who contacts the center and shall, on that same day, notify any operator known to have a subsurface installation in the area of the proposed excavation. The inquiry identification number shall remain valid for not more than twenty-eight calendar days from the date of issuance, and after that date shall require center revalidation. An excavator may revalidate the inquiry identification number by applying to the

center for revalidation prior to expiration. The excavator shall maintain a valid inquiry identification number for the duration of the excavation.

(c) The center shall maintain a record of all notifications by and from excavators and operators for a period of not fewer than three years.

§ -8 Marking of excavation site. (a) The excavator shall delineate the area to be excavated with white spray chalk or other suitable markings prior to calling the center. The excavator shall indicate the entire dimension of the excavation by known industrial practices and display the excavator's name, abbreviations, or initials next to or in the white spray chalk markings to identify the excavation site.

(b) When an excavator delineates an area to be excavated with white spray chalk, the excavator shall delineate the area in a manner that shall not be:

- (1) Misleading to the public using affected streets and highways;
- (2) Subject to misinterpretation as a traffic or pedestrian control; and
- (3) Construed as duplicative.

(c) Where an excavator determines that delineating with white spray chalk may be misleading, misinterpreted, or duplicative as specified under subsection (b), the excavator shall inform the center that the area to be excavated shall instead be identified with flags, stakes, or stake chasers marked with the excavator's name, abbreviations, or initials, to enable the operator to determine the area of excavation.

§ -9 Identification of subsurface installations by operator. (a) Any operator who receives timely notification from the center of any proposed excavation work pursuant to section -7(b) shall within five working days of that notification or before the start of the excavation work, whichever is later, or at a later time mutually agreeable to the operator and the excavator:

- (1) Advise the excavator that the operator does not operate any subsurface installations that may be affected by the excavation;
- (2) Advise the excavator of the approximate location of the operator's subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available in the records of the operator;
- (3) Make available to the excavator, for inspection and copying at the excavator's expense, information in that specific operator's or agency's records on the approximate location of that specific operator's or agency's subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available in that specific operator's or agency's records; or
- (4) Locate and field mark in conformance with the American Public Works Association Uniform Color Code the approximate location and the number of subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available as determined through the use of standard locating techniques or based on the records of the operator.

The operator shall promptly notify the center when the operator has fulfilled the requirements of this section. After receiving this notification from all affected operators, the center shall promptly provide notice to the excavator that all affected operators have fulfilled the requirements of this section.

(b) The excavator shall notify the center of any operator's failure to comply with this section and of the applicable inquiry identification number.

§ -10 Commencement of excavation. The center shall not prohibit an excavator from beginning excavation work:

- (1) After receiving notice that all affected operators have fulfilled the requirements of section -9; or
- (2) Five working days after the excavator provides notice of the excavation to the center pursuant to section -7(a); provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation.

§ -11 Remark of operator's subsurface installation. (a) The excavator shall take reasonable care to maintain an operator's field markings.

(b) If at any time during an excavation for which there is a valid inquiry identification number an operator's field markings are no longer reasonably visible, the excavator shall shut down the excavation and contact the center and request remarking of the subsurface installations. The center shall, on the same day, contact the operator and request remarking.

(c) Upon receiving timely renofication pursuant to this section, the operator shall within five working days, and to the extent necessary, remark those subsurface installations that may be affected by the excavation in conformance with section -9(a)(4). The operator shall promptly notify the center when the requirements of this section are fulfilled.

(d) The excavator may continue excavation:

- (1) After the center notifies the excavator that the operator has fulfilled the requirements of section -11(c); or
- (2) Five working days after the excavator requests remarking pursuant to section -11(b); provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation.

(e) If the excavator maintains the operator's field markings, then the excavator, when extending a location request ticket through the center, shall not request the operator to remark the operator's subsurface installations.

(f) The excavator shall notify the center of any operator's failure to comply with this section and of the applicable inquiry identification number.

(g) This section shall not apply to operators who comply with section -9(a)(1), (2), or (3).

§ -12 Excavation procedures. (a) The excavator shall exercise reasonable care when excavating in the vicinity of a subsurface installation.

(b) Before using any power-operated or power-driven excavating equipment, the excavator shall determine the exact location of subsurface installations in conflict with the excavation by first excavating down to the depth of the excavation with the appropriate hand tools within the area of the approximate location of the subsurface installations; provided that power-operated or power-driven excavating may be used:

- (1) For the removal of any existing pavement if there are no subsurface installations contained in the pavement; or
- (2) Within the approximate location of a subsurface installation by mutual agreement between the operator and the excavator.

(c) If after making every reasonable effort to locate the subsurface installation, the excavator cannot determine the exact location by hand excavation as set forth in subsection (b), the excavator shall request that the operator provide additional information through the center to locate the subsurface installation. The operator, within two working days, shall provide any information that is available to the operator to aid the excavator in determining the exact location.

(d) If after making every reasonable effort to locate the subsurface installation with the additional information provided pursuant to subsection (c) the excavator still cannot determine the exact location of the subsurface installation by hand excavation, the excavator shall notify the center. The center shall then:

- (1) Require the operator to determine the exact location of the operator's subsurface installation with appropriate hand tools; or
- (2) Allow the excavator to use powered equipment to continue the excavation, with or without on-site supervision by the operator; provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation.

(e) Each excavator responsible for any excavation that results in contact with, exposure of, or damage to a subsurface installation, before continuing excavation in the immediate area of the subsurface installation shall:

- (1) Immediately notify the operator of the location and nature of the damage and undertake any reasonable measures as requested by the operator; and
- (2) Allow reasonable time, consistent with industry practice, for any necessary repairs to be made to the subsurface installation.

(f) If the damage to a subsurface installation creates an emergency situation, the excavator shall:

- (1) Immediately notify the enhanced 911 emergency service and the operator of the facility; and
- (2) Minimize the hazard until the arrival of the enhanced 911 emergency service authority or the operator.

§ **-13 Excavation permits.** Prior to conducting an excavation, the excavator shall obtain all necessary permits from the appropriate agency or agencies pursuant to the laws, rules, regulations, procedures, and requirements governing the issuance of such permits.

§ **-14 Penalties.** (a) An action for the enforcement of penalties pursuant to this chapter shall be brought before the commission by the State, county, excavator, or any operator.

(b) Any excavator or operator who negligently violates, neglects, or fails in any particular instance to conform to or comply with any requirement of this chapter or any order or rule of the commission:

- (1) Shall be subject to a civil penalty not to exceed \$5,000 per day for each day such violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91; provided that the maximum penalty for related violations arising out of the same act, omission, or occurrence shall not exceed \$100,000; and
- (2) May be required, at the expense of the violator, to participate in an educational program conducted by the center; provided that any excavator who negligently violates section -7(a) shall be required, at the expense of the excavator, to participate in an educational program conducted by the center.

(c) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper. In determining whether such penalty should be remitted or mitigated, the commission may consider:

- (1) The gravity of the violation;

- (2) Whether the excavator or operator charged with the violation attempted in good faith to comply with this chapter, before and after notification of the violation; and
- (3) Any history of previous violations of this chapter by the operator or excavator.

(d) If any penalties imposed pursuant to this section are not paid or complied with within such period as the commission may direct, the attorney general shall institute a civil action in circuit court for compliance of the same.

(e) In addition to civil penalties imposed, the nonprevailing party shall reimburse the prevailing party for legal fees and costs incurred by the prevailing party.

(f) Notwithstanding any other law to the contrary, this chapter shall not affect any remedies, civil or criminal, otherwise provided by law. This chapter, and compliance therewith, shall not be construed as altering or mitigating any liabilities, responsibilities, or obligations imposed by law, rule, agreement, or contract, or as affording any immunity or protection from claims for injuries or damages relating to the excavation. This chapter does not expressly transfer, and shall not be deemed to imply the transfer of, any liability between operators and excavators. No insurance policy shall provide coverage for any civil penalties imposed under this chapter.

§ -15 Hearings. (a) All hearings, investigations, and proceedings shall be governed by this section, chapter 91, and by rules of practice and procedure adopted by the commission, and in the conduct thereof, the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.

(b) Complaints may be made, in writing, by the commission on its own motion or by the State, county, excavator, or any operator, setting forth any act or thing done, or omitted to be done by any excavator or operator in violation or claimed to be in violation, of any requirement of this chapter or of any order or rule of the commission.

(c) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission, the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

(d) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the operator or excavator complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in any proceeding before the courts of this State, and may be made personally or by mailing in a sealed envelope, registered or certified, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than fifteen days before the time set for the hearing.

(e) At the time fixed for any hearing before the commission or the time to which the hearing has been continued, the complainant and the person complained of, and such persons as the commission allows to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision which shall be based on findings of fact and conclusions of law therein stated. A copy of each order shall be served upon the person complained of, or the person's attorney.

(f) A complete record of all proceedings and testimony before the commission on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review an order or decision of the commission, a transcript of the testimony, together with all exhibits or copies thereof introduced, and of the pleadings, records, and proceedings in the cause, shall constitute the record of the commission, but the party or parties to the proceeding and the commission may stipulate that designated parts of the record need not be transmitted to the appellate court, as provided by the rules of the court.

§ -16 Reconsideration and rehearings. After any order or decision has been made by the public utilities commission, any party to the proceeding may apply once for reconsideration or a rehearing in respect to any matter determined in the proceeding and specified in the motion for reconsideration or rehearing. The motion for reconsideration or a rehearing shall be filed within ten days after the decision and order has been served and shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No person shall in any court urge or rely on any ground not so set forth in the motion. A motion for reconsideration or rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs. If, after reconsideration or rehearing the commission is of the opinion that the original order or decision, or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it. The order or decision abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.

§ -17 Appeals. From the order made on an application for reconsideration or rehearing by the public utilities commission under this chapter, an appeal shall lie in the manner provided in section 269-15.5."

SECTION 2. Section 269-30, Hawaii Revised Statutes, is amended to read as follows:

"§269-30 Finances; public utility fee. (a) Sections 607-5 to 607-9 shall apply to the public utilities commission and each commissioner, as well as to the supreme and circuit courts, and all costs and fees paid or collected pursuant to this section shall be deposited with the director of finance to the credit of the public utilities commission special fund established under section 269-33.

(b) There also shall be paid to the public utilities commission in each of the months of July and December of each year, by each public utility subject to investigation by the public utilities commission, a fee equal to one-fourth of one per cent of the gross income from the public utility's business during the preceding year, or the sum of \$30, whichever is greater. This fee shall be deposited with the director of finance to the credit of the public utilities commission special fund.

(c) Each public utility paying a fee under subsection (b) may impose a surcharge to recover the amount paid above one-eighth of one per cent of gross income. The surcharge imposed shall not be subject to the notice, hearing, and approval requirements of this chapter; provided that the surcharge may be imposed by the utility only after thirty days' notice to the public utilities commission. Unless ordered by the public utilities commission, the surcharge shall be imposed only until

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the conclusion of the public utility's next rate case; provided that the surcharge shall be subject to refund with interest at the public utility's authorized rate of return on rate base if the utility collects more money from the surcharge than actually paid due to the increase in the fee to one-fourth of one per cent.

(d) Notwithstanding any provision of this chapter to the contrary, the public utilities commission may, upon the filing of a petition by a public utility, credit a public utility for amounts paid under subsection (b) toward amounts the public utility owes in one call center fees under section ____-6(f).''

SECTION 3. Section 269-33, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established in the state treasury a public utilities commission special fund to be administered by the public utilities commission. The proceeds of the fund shall be used by the public utilities commission and the division of consumer advocacy of the department of commerce and consumer affairs for all expenses incurred in the administration of chapters 269, 271, 271G, ____, and 486J; provided that the expenditures of the public utilities commission shall be in accordance with legislative appropriations. On a quarterly basis, an amount not exceeding thirty per cent of the proceeds remaining in the fund after the deduction for central service expenses, pursuant to section 36-27, shall be allocated by the public utilities commission to the division of consumer advocacy and deposited in the compliance resolution fund established pursuant to section 26-9(o); provided that all moneys allocated by the public utilities commission from the fund to the division of consumer advocacy shall be in accordance with legislative appropriations.

(b) All moneys appropriated to, received, and collected by the public utilities commission that are not otherwise pledged, obligated, or required by law to be placed in any other special fund or expended for any other purpose shall be deposited into the public utilities commission special fund including, but not limited to, all moneys received and collected by the public utilities commission pursuant to sections 92-21, 269-28, 269-30, 271-27, 271-36, 271G-19, __-6, __-14, and 607-5.’’

SECTION 4. There is appropriated out of the public utilities commission special fund of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2004-2005 to establish and operate a one call center, including the hiring of necessary staff.

The sum appropriated shall be expended by the public utilities commission to carry out the purposes of this Act.

SECTION 5. Nothing in this chapter shall be deemed or construed to preempt any federal law or regulation governing subsurface installations subject to federal jurisdiction.

SECTION 6. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2009.

(Approved June 22, 2004.)

Note

1. No subsection “(a)” designation.

ACT 142

S.B. NO. 2968

A Bill for an Act Relating to Natural Resource Violations.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Hawaii's fragile natural resources demand the highest level of protection from overuse and abuse. An effective enforcement program is essential for proper stewardship of Hawaii's natural resources. Part of an effective enforcement program is to allow for tiered penalties that provide serious consequences for the most serious violations and allow for lesser penalties for lesser violations. It should also include the ability to process quickly and efficiently the more minor infractions of the regulations that govern the use of our natural resources so that greater enforcement resources can be dedicated to more serious violations.

Ten years ago, the department of land and natural resources had a major backlog of pending cases of alleged violations of sections 183-41 and 183-43, Hawaii Revised Statutes, governing the use of the conservation district (now chapter 183C, Hawaii Revised Statutes). Most of the alleged violations were minor but under sections 183-41 and 183-43, Hawaii Revised Statutes, the only way to resolve violations was to go to the board of land and natural resources and be subject to a fine of up to \$2,000 per day.

In an effort to streamline the process and reduce the sizable backlog of cases, the board of land and natural resources approved a voluntary program whereby the alleged violator could opt out of appearing before the board of land and natural resources and either pay a fine or request a hearing from a hearings officer under section 171-6(8), Hawaii Revised Statutes. The hearings officer administrative penalty system has been a pilot program at the department of land and natural resources since 1994. The system allows an alleged violator to opt out for a hearings officer who presides over minor violations of title 12 and chapter 6E, Hawaii Revised Statutes, in the same way a traffic court does for minor traffic violations. This system has expedited the processing of minor violations, resulting in surer punishment for offenders and more time for departmental enforcement officers to concentrate their limited resources on more serious violations, and has resulted in more enforcement of departmental rules. Given the success of the pilot program, the department of land and natural resources would like to implement this system department-wide but cannot do so without specific statutory authority.

The purpose of this Part is to give the department of land and natural resources authority to implement a system similar to the administrative hearing system as a mandatory department-wide program.

SECTION 2. The Hawaii Revised Statutes is amended by adding to title 12 a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CIVIL NATURAL RESOURCE VIOLATIONS ACT**

§ -1 Civil natural resource violations system authorization. (a) There is established, within the department of land and natural resources, a civil natural resource violations system, whose purpose shall be to process violations of departmental regulations for which administrative penalties have been authorized by law or rules adopted thereunder.

(b) The department shall adopt, amend, and repeal rules, subject to chapter 91, for the purposes of this chapter.

(c) The rules may include, but are not limited to, the following:

- (1) Notice of natural resource infraction;
- (2) A form of the answer that shall be made pursuant to a notice of natural resource infraction, which answer may be an admission of the infraction, a denial of the infraction, or an admission of the infraction with mitigating circumstances;
- (3) The action to be taken after an answer is received or when a person fails to answer the notice of natural resource infraction;
- (4) Administrative hearings under this chapter;
- (5) The imposition and enforcement of monetary assessments made pursuant to this chapter; and
- (6) Means of assuring that the alleged violator who answers the notice of natural resource infraction by an admission of the infraction or an admission of the infraction with mitigating circumstances has knowingly and voluntarily elected to use the civil natural resource violations system and waive the appeal provided for in section 91-14.

§ -2 **Applicability.** Notwithstanding any other provision of law to the contrary, all natural resource infractions that the department identifies as subject to administrative penalties may be adjudicated pursuant to this chapter. This chapter may be applied by all of the divisions of the department.”

SECTION 3. Chapter 6K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§6K- **Administrative violation system.** With the mutual consent of both the commission and the department, the commission may use the civil natural resource violations system of the department of land and natural resources; provided that the commission shall act whenever the board is authorized to act, to process violations of chapter 6K or any rules adopted thereunder.”

SECTION 4. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- **General administrative penalties.** (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys’ fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys’ fees and costs, or payment for damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000;
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State

from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense.”

SECTION 5. Chapter 174C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§174C- Administrative violation system.** With the mutual consent of both the commission and the department, the commission may use the civil natural resource violations system of the department of land and natural resource; provided that the commission shall act whenever the board is authorized to act, to process violations of chapter 174C or any rules adopted thereunder.”

SECTION 6. Section 174C-15, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§174C-15)]~~ **Penalties and common law remedies.** (a) The commission may enforce its rules and orders adopted pursuant to this chapter by suit for injunction or for damages or both.

(b) Any person who violates any provision of this chapter, or any rule adopted pursuant to this chapter, may be subject to a fine imposed by the commission. Such fine shall not exceed ~~[\$1,000.]~~ \$5,000. For a continuing offense, each day during which the offense is committed is a separate violation.

(c) No provision of this chapter shall bar the right of any injured person to seek other legal or equitable relief against a violator of this chapter.

(d) Except as otherwise provided by law, the commission or its authorized representative by proper delegation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys’ fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys’ fees and costs, or payment for damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter.”

SECTION 7. Section 171-6.5, Hawaii Revised Statutes, is repealed.

PART II

SECTION 8. Section 199-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§199-1)]~~ **Board of land and natural resources, powers and duties.** The board of land and natural resources shall establish within the department of land and natural resources a conservation and resources enforcement program relating to the enforcement of ~~[chapters under]~~ title 12 ~~[entitled “Conservation and Resources,”]~~ chapters 6D, 6E, and 6K, and rules ~~[and regulations promulgated]~~ adopted thereunder, and shall employ or appoint, and remove, the following persons, subject to chapter 76 and section 78-1, who shall be provided with suitable badges or insignia of office by the department of land and natural resources:

- (1) An enforcement chief of the department of land and natural resources, who shall be the head of the conservation and resources enforcement program and shall have charge, direction, and control, subject to the direction and control of the board, of all matters relating to the enforcement of ~~[state conservation and resources laws]~~ title 12, chapters 6D, 6E, and 6K, and rules ~~[and regulations promulgated]~~ adopted thereunder and such other matters as the board may from time to time direct.

- The enforcement chief shall be an administrator experienced in conservation and resources law enforcement and management[-]; and
- (2) Personnel and enforcement officers of the conservation and resources enforcement program, including but not limited to enforcement officers on a voluntary basis and without pay."

SECTION 9. Section 199-2, Hawaii Revised Statutes, is amended to read as follows:

"[§199-2] Board of land and natural resources, delegation of authority. The board of land and natural resources may delegate to enforcement officers within the conservation and resources enforcement program, such authority as may be required for enforcement of [state conservation and resources laws] title 12, chapters 6D, 6E, and 6K, and rules [and regulations promulgated] adopted thereunder."

SECTION 10. Section 199-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The conservation and resources enforcement officers, with respect to all state lands, including public lands, state parks, forest reserves, forests, aquatic life and wildlife areas, Kaho'olawe island reserve, and any other lands and waters [subject to the jurisdiction of the department of land and natural resources,] within the State, shall:

- (1) Enforce title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder;
- (2) Investigate complaints, gather evidence, conduct investigations, and conduct field observations and inspections as required or assigned;
- (3) Cooperate with enforcement authorities of the State, counties, and federal government in development of programs and mutual aid agreements for conservation and resources enforcement activities within the State;
- (4) Cooperate with established search and rescue agencies of the counties and the federal government in developing plans and programs and mutual aid agreements for search and rescue activities within the State;
- (5) Check and verify all leases, permits, and licenses issued by the department of land and natural resources;
- (6) Enforce the laws relating to firearms, ammunition, and dangerous weapons contained in chapter 134;
- (7) Enforce the laws in chapter 291E relating to operating a vessel on or in the waters of the State while using intoxicants;
- (8) Whether through a specifically designated marine patrol or otherwise, enforce the rules in the areas of boating safety, conservation, and search and rescue relative to the control and management of boating facilities owned or controlled by the State, ocean waters, and navigable streams and any activities thereon or therein, and beaches encumbered with easements in favor of the public, and the rules regulating vessels and their use in the waters of the State; and
- (9) Carry out other duties and responsibilities as the board of land and natural resources from time to time may direct."

SECTION 11. Section 199-4, Hawaii Revised Statutes, is amended to read as follows:

“§199-4 Board of land and natural resources, police powers. (a) The board of land and natural resources shall have police powers and may appoint and commission enforcement officers within the conservation and resources enforcement program. Persons appointed and commissioned under this section shall have and may exercise all of the powers and authority of a police officer, including the power of arrest, and [shall] in addition to enforcing title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder, may enforce all other state laws and rules, and county ordinances within all [state lands, state shorewaters and shores, and county parks;] lands and waters of the State; provided that such powers shall remain in force and effect only while in actual performance of their duties, which shall include off-duty employment when such employment is for other state departments or agencies. These enforcement officers shall consist of personnel whose primary duty will be the enforcement of title 12, [entitled “Conservation and Resources,”] chapters 6D, 6E, and 6K, and the rules adopted thereunder within the areas under the jurisdiction of the department of land and natural resources.

(b) An enforcement officer, upon arresting any person for violation of title 12 [and rules], chapter 6D, 6E, or 6K, or any rule adopted thereunder, may immediately take the person arrested to a police station or before a district judge, or take the name, address, and the number of the fishing, hunting, or other licenses or permits, if any, of the person, and note the violation of the law or rule by the person, and issue the person a summons or citation, printed in the form described in section 199-5, warning the person to appear and to answer to the charge against the person at a certain place and time within seven days after the arrest. Any person failing to obey a summons issued pursuant to this section shall be subject to section 199-6.”

SECTION 12. Section 199-5, Hawaii Revised Statutes, is amended to read as follows:

“§199-5 Summons or citation. There shall be a form of summons or citation for use in citing violators of title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder, which do not mandate the physical arrest of the violators. The summons or citation shall be printed in a form commensurate with the form of other summons or citation used in modern methods of arrest and shall be so designed to include all necessary information to make it valid and legal within the laws and rules of the State. The form and content of the summons or citation shall be adopted or prescribed by the district courts.

In every case where a summons or citation is issued, the original of the same shall be given to the violator; provided that the district courts may prescribe the issuance to the violator of a carbon copy of the summons or citation and provide for the disposition of the original and any other copies. Every summons or citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.”

SECTION 13. Section 199-6, Hawaii Revised Statutes, is amended to read as follows:

“§199-6 Failure to obey a summons. Any person who fails to appear at the place and within the time specified in the summons or citation issued by the officers or their agents or subordinates, upon that person’s arrest for violation of title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder, shall be guilty of a petty misdemeanor and, upon conviction, shall be fined not more than \$500 or be imprisoned not more than thirty days, or both.

If any person fails to comply with a summons or citation issued, or if any person fails or refuses to deposit bail as required and within the time permitted, the

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officers shall cause a complaint to be entered against the person and secure the issuance of a warrant for the person's arrest.

When a complaint is made to any prosecuting officer of the violation of title 12, chapters 6D, 6E, and 6K, and rules adopted thereunder, the officer who issued the summons or citation shall subscribe to it under oath administered by another official or officials of the department of land and natural resources whose names have been submitted to the prosecuting officer and who have been designated by the chairperson of the board of land and natural resources to administer the same."

SECTION 14. Section 199-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any police officer or agent of the department of land and natural resources upon whom the board of land and natural resources has conferred powers of police officers, shall have the authority to conduct searches on probable cause as provided by law and to seize any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource used or taken in violation of the provisions contained in chapters 6D, 6E, and 6K, or title 12, or any rules adopted thereunder. For purposes of this section, "natural resource" includes any archaeological artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds."

PART III

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 16. This Act shall take effect upon its approval.

(Approved June 23, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 143

H.B. NO. 2375

A Bill for an Act Relating to Solid Waste Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 342H, Hawaii Revised Statutes, is amended by adding to part II two new sections to be appropriately designated and to read as follows:

"§342H- Felony disposal of solid waste. (a) A person commits the offense of felony disposal of solid waste if the person:

- (1) Knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste in an amount equal to or greater than ten cubic yards in volume anywhere other than a permitted solid waste management system without the written approval of the director;
- (2) After having been sentenced under this section or section 342H-30 on two separate and prior occasions, knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste in an amount greater than one cubic yard in volume anywhere other than a

permitted solid waste management system without the written approval of the director; or

- (3) Knowingly discards, disposes of, deposits, discharges, or dumps solid waste, or by contract or otherwise arranges directly or indirectly for the disposal of solid waste anywhere other than a permitted solid waste management system without the written approval of the director for which the expense of recovering, removing, restoring, and lawfully disposing of the solid waste exceeds \$1,500.

(b) The penalties under this section shall supersede the penalties under section 342H-30, but otherwise this section shall not supersede any other disposal prohibitions established under federal, state, or county law, ordinance, regulation, or rule.

(c) Felony disposal of solid waste is a class C felony for which a maximum fine of \$50,000 for each separate offense may be imposed.

§342H- Felony disposal of solid waste; deferred prosecution agreement. First time offenses for persons cited with felony disposal of solid waste may enter into a deferred prosecution agreement. Persons failing to meet all of the terms of a deferred prosecution agreement shall be subject to prosecution under this section.

For the purposes of this section, a deferred prosecution agreement shall mean an agreement offered by the prosecutor, in the prosecutor's discretion, to the person cited that would defer prosecution during the statute of limitations period, subject to renewed prosecution if the defendant violates the conditions of the agreement. The agreement, if one is offered, shall contain provisions reasonably calculated to deter future violations. No person shall be offered a deferred prosecution agreement under this section more than once. If all terms of the agreement are met, all records of the person's arrest, indictment, or plea shall be cleared. Entering into a deferred prosecution agreement shall not be considered an admission of guilt."

SECTION 2. Section 342H-30, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No person, including any public body, shall discard, dispose of, deposit, discharge, or dump solid waste, or by contract or otherwise arrange directly or indirectly for the disposal of solid waste in an amount greater than one or less than ten cubic [yard] yards in volume anywhere other than a permitted solid waste management system without the prior written approval of the director. This prohibition shall not be deemed to supersede any other disposal prohibitions established under federal, state, or county law, regulation, rule, or ordinance."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 23, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Funding of a Habitat Conservation Plan.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. A habitat conservation plan is a tool that provides opportunities for landowners to protect endangered species or habitat areas. Habitat conservation plans are administered federally by the United States Fish and Wildlife Service, as well as by the state department of land and natural resources. Under federal guidelines, a landowner may use various financial tools to provide assurances that there will be sufficient funding to implement an approved habitat conservation plan.

The purpose of this Act is to provide the department of land and natural resources the same financial flexibility as the federal guidelines provide for habitat conservation plans.

SECTION 2. Section 195D-4, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) After consultation with the endangered species recovery committee, the board may issue a temporary license as a part of a habitat conservation plan to allow a take otherwise prohibited by subsection (e) if the take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity; provided that:

- (1) The applicant, to the maximum extent practicable, shall minimize and mitigate the impacts of the take;
- (2) The applicant shall guarantee that adequate funding for the plan will be provided;
- (3) The applicant shall post a bond, ~~[or deposit]~~ provide an irrevocable letter of credit, insurance, or surety bond, or provide other similar financial tools, including depositing a sum of money in the endangered species trust fund created by section [183D-10.5,] 195D-31, or provide other means approved by the board, adequate to ensure monitoring of the species by the State and to ~~[assure]~~ ensure that the applicant takes all actions necessary to minimize and mitigate the impacts of the take;
- (4) The plan shall increase the likelihood that the species will survive and recover;
- (5) The plan takes into consideration the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed;
- (6) The measures, if any, required under section 195D-21(b) shall be met, and the department has received any other assurances that may be required so that the plan may be implemented;
- (7) The activity, which is permitted and facilitated by issuing the license to take a species, does not involve the use of submerged lands, mining, or blasting;
- (8) The cumulative impact of the activity, which is permitted and facilitated by the license, provides net environmental benefits; and
- (9) The take is not likely to cause the loss of genetic representation of an affected population of any endangered, threatened, proposed, or candidate plant species.

Board approval shall require an affirmative vote of not less than two-thirds of the authorized membership of the board after holding a public hearing on the matter on the affected island. The department shall notify the public of a proposed license under this section through publication in the periodic bulletin of the office of

environmental quality control and make the application and proposed license available for public review and comment for not less than sixty days prior to approval.”

SECTION 3. Section 195D-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the state treasury a ~~[special]~~ trust fund to be known as the endangered species trust fund to be administered by the department ~~[in order]~~ to implement the purposes of this chapter.

The fund shall consist of moneys from the following sources:

- (1) Moneys accrued from the sale of retail items officially sponsored by the department for the fund;
- (2) Private contributions for the management and recovery of Hawaii’s unique plants and animals;
- (3) Fees and assessments charged for the commercial use of public land and waters and designated for the fund;
- (4) Penalties, fines, or auctions resulting from enforcement violations ~~[for this chapter; and]~~¹;
- (5) Legislative appropriations~~[-]~~; and
- (6) Moneys deposited to implement the obligations of a habitat conservation plan or as security for habitat conservation plan funding.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 23, 2004.)

Note

1. So in original.

ACT 145

S.B. NO. 3092

A Bill for an Act Relating to Solid Waste Management.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there has been a sharp increase in the number of illegal dumpsites throughout the islands, that threatens the health and safety of Hawaii’s residents, as well as despoils the natural beauty of the islands. Communities have mobilized to fight this problem by sponsoring clean-up events, encouraging and expanding recycling efforts, and raising public awareness. Despite these efforts, illegal dumpsites continue to proliferate throughout the islands.

The legislature further finds that the laws against illegal dumping are well written and well intentioned. However, without the sufficient personnel to properly enforce the laws, illegal dumping will continue throughout the islands. Using the communities and empowering them with incentives may significantly decrease the number of illegal dumpsites without increasing the financial burden on the State.

The purpose of this Act is to award a person reporting an illegal dumpsite fifty per cent of the fines collected as a result of a conviction of an individual or company in violation of section 342H-30, Hawaii Revised Statutes.

SECTION 2. Section 342H-30, Hawaii Revised Statutes, is amended to read as follows:

“§342H-30 Prohibition. (a) No person, including any public body, shall engage in the operation of an open dump.

(b) No person, including any public body, shall operate a solid waste management system without first securing approval in writing from the director.

(c) No person, including any public body, shall discard, dispose of, deposit, discharge, or dump solid waste[;] or by contract or otherwise arrange directly or indirectly for the disposal of solid waste in an amount greater than one cubic yard in volume anywhere other than a permitted solid waste management system without the prior written approval of the director. This prohibition shall not be deemed to supersede any other disposal prohibitions established under federal, state, or county law, regulation, rule, or ordinance.

(d) In addition to any other penalty provided by law, a person who knowingly violates or knowingly consents to the violation of this section shall be subject to one or more of the following penalties:

- (1) Criminal penalties of not more than \$25,000 for each separate offense;
- (2) Not more than thirty days imprisonment for each offense; or
- (3) Revocation or suspension by court order of any contractor's license to operate as a contractor or any applicable certificate of authorization from the public utilities commission.

Each day of a violation shall constitute a separate offense.

(e) Each fine collected under this section shall be distributed to the authorized agency that enforced the activity prohibited under this section; provided that when a fine is collected, fifty per cent of the fine shall be awarded to the person, if any, who reported the activity prohibited under this section.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved June 24, 2004.)

ACT 146

H.B. NO. 2013

A Bill for an Act Relating to Polybrominated Diphenyl Ethers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that consumer product manufacturers commonly add flame-retardant chemicals to plastics and other flammable materials to reduce the risk of fire. One of the most common flame-retardant chemicals is brominated flame retardant. Brominated flame retardants are chemicals that reduce the spread of fire in a variety of common products such as electronic casings, polyurethane foam, and commercial textiles. The most studied of these flame retardants are polybrominated diphenyl ethers, or PBDEs. Although useful as a flame retardant, PBDEs escape into the environment during the manufacture, use, and disposal of products containing this chemical.

The legislature further finds that three different mixtures of PBDEs are commercially available: pentabrominated diphenyl ethers (pentaBDEs), octabrominated diphenyl ethers (octaBDEs), and decabrominated diphenyl ethers (decaBDEs). PentaBDEs are mainly used as an additive in polyurethane foams that are widely used in upholstered products ranging from home furniture to seats in airplanes and automobiles. Some components are resistant to biodegradation and

persist in the environment. These components of the pentaBDE product are insoluble in water and concentrate in the fatty tissue of living organisms.

OctaBDEs are primarily used as an additive to acrylonitrile-butadiene-styrene, a plastic used in housings for office and medical electronics, interior and exterior trim on automobiles, telephone handsets, and other products. The octaBDE product shares similar properties with the pentaBDE and accumulates in living organisms as well.

DecaBDEs are mainly added to high-impact polystyrene plastic, including housings for televisions, computers, stereos, and other products such as plastic furniture and toys. It, too, escapes into the environment because it is not chemically bound to the materials in which it is used. Although industry scientists assert that the chemicals found in the decaBDE product are too large to be efficiently taken up by living organisms, some evidence is turning up that decaBDE has been found in the tissue of living organisms in Europe.

Disturbingly, recent U.S. studies show the presence of PBDEs in human breast milk at an average level seventy-five times higher than those found in Europe. The PBDE levels found during this study were the highest worldwide recorded levels of PBDE in human tissue to date. In response to the release of these studies, a director from the Environmental Protection Agency stated that "levels of PBDE's are doubling in humans every two to five years", showing the pervasiveness and growth of a relatively unknown contaminant.

The legislature also finds that substantial public and private efforts to eliminate brominated flame retardants have made numerous alternatives available that are safe to human health and compliant with the strictest of fire safety standards. It is the purpose of this Act to phase out the use of PBDEs in the State of Hawaii.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER POLYBROMINATED DIPHENYL ETHERS

§ -1 Definitions. As used in this chapter:

"OctaBDE" means octabrominated diphenyl ether.

"PentaBDE" means pentabrominated diphenyl ether.

§ -2 Restriction on manufacture or distribution. On or after January 1, 2006, a person may not manufacture, process, or distribute in commerce a product, or a flame-retarded part of a product, containing more than one-tenth of one per cent, by mass, of pentaBDE, octaBDE, or any other chemical formulation that is part of these classifications.

§ -3 Exception. The term "process," as used in section -2, does not include the processing of metallic recyclables containing pentaBDE, octaBDE, or any other chemical formulation that is part of these classifications that is conducted in compliance with all applicable federal, state, and local laws."

SECTION 3. This Act shall take effect upon its approval.

(Approved June 24, 2004.)

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 29-25, Hawaii Revised Statutes, is amended to read as follows:

“**[§29-25] Department of education; federal funds; general fund offset.** (a) Federal impact aid, [U.S.] United States Department of Defense funds, and federal indirect overhead reimbursements received by the department of education shall not be returned to the general fund.

(b) If the amount of federal impact aid and [U.S.] United States Department of Defense funds received by the department of education exceeds the authorized appropriation in the general appropriations act or the supplemental appropriations act, then the governor shall:

- (1) Allow the department of education to increase the federal fund expenditure ceiling for all program identification numbers, each by an amount proportionate to its portion of the total general fund appropriation made by the legislature[;] and by the amount that the federal impact aid and [U.S.] United States Department of Defense funds received by the department of education exceeds the authorized appropriation in the general appropriations act or the supplemental appropriations act; and
- (2) Allow the department of education to retain the full amount of the general fund offset created by increased impact aid receipts; provided that the department shall not use the general fund offset to create new programs or expand existing programs.

(c) Beginning July 1, 2004, and for each fiscal year thereafter, the department of education may set aside \$100,000 of federal impact aid moneys received pursuant to this section to:

- (1) Establish and fund a permanent, full-time military liaison position within the department of education; and
- (2) Fund the joint venture education program to facilitate interaction between the military community and the department of education.

The military liaison position established under paragraph (1) shall be exempt from chapter 76 but shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State.

[(e)] (d) The department of education shall submit a report to the legislature, not fewer than twenty days prior to the convening of each regular session, concerning the exact amount and specific nature of federal impact aid, [U.S.] United States Department of Defense funds, and federal indirect overhead reimbursements received under this section.”

SECTION 2. Section 302A-1404, Hawaii Revised Statutes, is amended to read as follows:

“**[§302A-1404] Federal indirect overhead reimbursements.** (a) The department may retain and expend federal indirect overhead reimbursements for discretionary grants in excess of the negotiated rate for such reimbursements as determined by the director of finance and the superintendent.

(b) Beginning July 1, 2004, and for each fiscal year thereafter, the department of education may set aside \$100,000 of federal impact aid moneys received pursuant to this section to:

- (1) Establish and fund a permanent, full-time military liaison position within the department of education; and
- (2) Fund the joint venture education program to facilitate interaction between the military community and the department of education.

The military liaison position established under paragraph (1) shall be exempt from chapter 76 but shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State."

SECTION 3. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2004.

(Approved June 24, 2004.)

ACT 148

S.B. NO. 2929

A Bill for an Act Relating to Medicaid Reimbursement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346D-1.5, Hawaii Revised Statutes, is amended to read as follows:

"§346D-1.5 Medicaid reimbursement equity. Not later than [June 30, 2003,] July 1, 2008, there shall be no distinction between hospital-based and nonhospital-based reimbursement rates for institutionalized long-term care under medicaid. Reimbursement for institutionalized intermediate care facilities and institutionalized skilled nursing facilities shall be based solely on the level of care rather than the location. This section shall not apply to critical access hospitals."

SECTION 2. Act 226, Session Laws of Hawaii 2000, is amended by amending section 9 to read as follows:

~~"SECTION 9. This Act shall take effect on July 1, 2000[, and shall be repealed on June 30, 2004; provided that sections 346-1, 346-59, 346D-1, and 346D-1.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2000]."~~

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 29, 2004.

(Approved June 27, 2004.)

A Bill for an Act Making Appropriations for Claims Against the State, its Officers, or its Employees.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The following sums or so much thereof as may be necessary for fiscal year 2003-2004 are appropriated out of the general revenues of the State of Hawaii to the department of the attorney general for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the State or its officers or employees for the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amounts set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
1. DEPARTMENT OF AGRICULTURE:	
Martin, et al. v. State of Hawaii, et al. Civil No. 01-1-3159-07, First Circuit	\$ 1,175,000.00 Settlement
SUBTOTAL:	\$ 1,175,000.00
2. DEPARTMENT OF EDUCATION:	
Amaral, et al. v. State of Hawaii, et al. Civil No. 99-0583(1), Second Circuit	\$ 55,000.00 Settlement
Figaroa v. State of Hawaii Civil No. 00-01-0146, Fifth Circuit	\$ 40,000.00 Settlement
Gay v. Department of Education Civil No. 02-00454DAE-KSC, USDC	\$ 10,000.00 Settlement
Lani v. Department of Education, et al. Civil No. 02-1-0128, Fifth Circuit	\$ 16,421.66 Judgment
Amount of Judgment: \$15,876.09 4% interest from 7/28/03: \$ 545.57	
Mother Doe No. I, et al. v. State of Hawaii, et al., Civil No. 01-1-0930-03, First Circuit	\$ 15,000.00 Settlement
Ms. Doe Parent, et al. v. State of Hawaii, et al., Civil No. 01-1-1101-04, First Circuit	\$ 65,000.00 Settlement
Rahsaan v. State of Hawaii, et al. Civil No. 00-00795HG-LEK, USDC	\$ 84,463.12 Judgment
Torelli, et al. v. Department of Education, et al. Civil No. 02-1-0082, Fifth Circuit	\$ 19,000.00 Settlement
SUBTOTAL:	\$ 304,884.78
3. DEPARTMENT OF HEALTH:	
Bohland v. State of Hawaii Civil No. 03-1-2558-12, First Circuit	\$ 105,000.00 Settlement
Chua, et al. v. State of Hawaii Civil No. 03-1-0357-02, First Circuit	\$ 30,000.00 Settlement

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

AMOUNT

Kelly, et al. v. 1250 Oceanside, et al. Civil No. 00-1-0192K, Third Circuit	\$ 60,000.00 Settlement
SUBTOTAL	\$ 195,000.00
4. DEPARTMENT OF HUMAN SERVICES:	
Dolfo, et al. v. Koller, et al. Civil No. 02-1-2192-09, First Circuit	\$ 20,966.79 Settlement
In the Interest of Jane Doe, Born on July 13, 1998 Supreme Court No. 24913	\$ 54,334.89 Judgment
Amount of Judgment: \$51,559.68 10% interest from 1/15/04-7/31/04: \$ 2,775.21	
Mariveles, et al. v. Helm, et al. Civil No. 01-1-0549(3), Second Circuit	\$ 67,500.00 Settlement
Puuwai Momi Tenants Association, et al. v. Miyashiro Civil No. 02-00323ACK-BMK, USDC	\$ 11,000.00 Settlement
SUBTOTAL:	\$ 153,801.68
5. DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS:	
Vinson v. Thomas Civil No. 97-00091HG, USDC	\$ 117,500.00 Settlement
SUBTOTAL:	\$ 117,500.00
6. DEPARTMENT OF LAND AND NATURAL RESOURCES:	
Claim of Finance Factors	\$ 82,500.00 Settlement
Duncan v. Sheraton, et al. Civil No. 02-1-1292-05, First Circuit	\$ 15,945.46 Settlement
In Re: Sacred Falls Cases	\$ 2,000,000.00 Settlement
SUBTOTAL:	\$ 2,098,445.46
7. DEPARTMENT OF PUBLIC SAFETY:	
Campos v. State of Hawaii Civil No. 02-1-0289(1), Second Circuit	\$ 40,000.00 Settlement
Davenport v. State of Hawaii, et al. Civil No. 01-1-0030, Second Circuit	\$ 55,000.00 Settlement
Ford v. State of Hawaii, et al. Civil No. 02-1-0187, Third Circuit	\$ 20,000.00 Settlement
Henderson v. State of Hawaii, et al. Civil Nos. 00-1-0216 and 02-1-0407, Third Circuit	\$ 200,000.00 Settlement
Karish v. State of Hawaii, et al. Civil No. 02-1-1163-05, First Circuit	\$ 42,500.00 Settlement

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AND SETTLEMENTS OF CLAIMS:****AMOUNT**

Lewis v. State of Hawaii	\$ 175,000.00
Civil No. 01-1-1371-05, First Circuit	Settlement
Mattos, et al. v. State of Hawaii, et al.	\$ 245,000.00
Civil No. 00-387SOM-LEK, USDC	Settlement
Tapaoan, et al. v. State of Hawaii	\$ 1,200,000.00
Civil No. 01-000815, USDC	Settlement
SUBTOTAL:	\$ 1,977,500.00
8. OFFICE OF THE LIEUTENANT GOVERNOR	
Smith v. State of Hawaii,	
Campaign Spending Commission, et al.	\$ 142,943.46
Civil No. 02-00068HG-BMK, USDC	Judgment
Amount of Judgment:	\$142,136.20
1.23% interest from	
2/28/04 to 8/15/04:	\$ 807.26
SUBTOTAL:	\$ 142,943.46
9. MISCELLANEOUS CLAIMS:	
Rose K. J. Miller	\$ 1,002.50
Robert T. Miyabuchi	\$ 395.72
Charles Ramos	\$ 425.10
Eugene Seu	\$ 27.00
Robert and Kai Shun Warner	\$ 800.00
SUBTOTAL:	\$ 2,650.32
TOTAL (SECTION 1):	\$ 6,167,725.70

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

PART II

SECTION 2. The following sums or so much thereof as may be necessary for fiscal year 2003-2004 are appropriated out of the harbor special fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:****DEPARTMENT OF TRANSPORTATION,
HARBORS DIVISION:**

Lowe v. Young Brothers, Ltd., et al.	\$ 25,000.00
Civil No. 00-1-0131(2), Second Circuit	Settlement
Solliday v. State of Hawaii, et al.	\$ 45,000.00
Civil No. 02-00680DAE-BMK, USDC	Settlement
SUBTOTAL:	\$ 70,000.00
TOTAL (SECTION 2):	\$ 70,000.00

The sums appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 3. The following sums or so much thereof as may be necessary for fiscal year 2003-2004 are appropriated out of the highway special fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF TRANSPORTATION,
HIGHWAYS DIVISION:**

Chan v. Island Movers, Inc., et al. Civil No. 02-1-1512-06, First Circuit	\$ 25,000.00 Settlement
Ducosin v. State of Hawaii, et al. Civil No. 99-0735(3), Second Circuit	\$ 540,000.00 Settlement
Godbehere v. State of Hawaii, et al. Civil No. 02-1-1292-05, First Circuit	\$ 100,000.00 Settlement
Kealoha, et al. v. Johnson, et al. Civil No. 01-1-0681(3), Second Circuit	\$ 705,000.00 Settlement
Kia v. Nieto, et al. Civil No. 01-1-1811-06, First Circuit	\$ 50,000.00 Settlement
Morita v. County of Hawaii, et al. Civil Nos. 99-101 and 00-1-123, Third Circuit	\$ 684,416.12 Settlement
SUBTOTAL:	\$ 2,104,416.12
TOTAL (SECTION 3):	\$ 2,104,416.12

The sums appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 4. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of education or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

DEPARTMENT OF EDUCATION:

Gay v. Department of Education Civil No. 02-00454 DAE-KSC, USDC	\$ 10,000.00 Settlement
SUBTOTAL:	\$ 10,000.00
TOTAL (SECTION 4):	\$ 10,000.00

Provided that of the legislative appropriation for the department of education for fiscal year 2004-2005 in section 3 of Act 200, Session Laws of Hawaii 2003, as amended by __B. No. __ (the Supplemental Appropriations Act of 2004¹), the general fund sum of \$10,000.00 shall be expended from the School Based Budget (EDN 100) by the department of education for the purposes of this Act.

SECTION 5. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of land and natural resources or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF LAND AND NATURAL
RESOURCES:**

Young, et al. v. Coloma-Agaran, et al.	\$ 251,849.75
Civil No. 00-00774HG-BMK, USDC and	Judgment
No. 02-15202, Ninth Circuit Court of Appeals	

Provided that of the legislative appropriation for the department of land and natural resources, boating special fund, for fiscal year 2004-2005 in section 3 of Act 200, Session Laws of Hawaii 2003, as amended by __B. No. __ (the Supplemental Appropriations Act of 2004¹), the sum of \$251,849.75 shall be expended from the Boating Special Fund (LNR 801) for the purposes of this Act.

SECTION 6. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named persons for claims against the State or the department of business, economic development, and tourism/Hawaii tourism authority or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM:**

Hawaii Tourism Authority v. Pacific	\$ 20,000.00
Motivation Advisors, Inc., et al.	Settlement
Civil No. 03-00014DAE/LEK, USDC	
SUBTOTAL:	<u>\$ 20,000.00</u>
TOTAL (SECTION 6):	\$ 20,000.00

Provided that of the legislative appropriation for the department of business, economic development, and tourism for fiscal year 2003-2004 in section 3 of Act 200, Session Laws of Hawaii 2003, as amended by __B. No. __ (the Supplemental Appropriations Act of 2004¹), the sum of \$20,000.00 shall be expended from the Tourism Special Fund (BED 113TO) by the Hawaii tourism authority for the purposes of this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,340,027.14, or so much thereof as may be necessary, for fiscal year 2004-2005 to the State, Hawaii health systems corporation, and the judiciary for the purposes of:

- (1) Satisfying the terms of settlement agreements between the State, Hawaii health systems corporation, the judiciary, and the United Public Workers, AFSCME, Local 646, AFL-CIO ("UPW") to pay employees who are members of collective bargaining units 1 and 10 amounts owed for a proposed deferred compensation plan sponsored by UPW that was never implemented (the amounts owed to these employees are autho-

rized and provided in prior collective bargaining agreements between the State, Hawaii health systems corporation, the judiciary, and UPW); and

- (2) Providing adjustments of a comparable nature to excluded employees under chapter 89C, Hawaii Revised Statutes, if applicable.

Funds appropriated under this section shall be subject to:

- (1) The execution of settlement agreements between the State, Hawaii health systems corporation, the judiciary, and UPW for employees who are members of collective bargaining units 1 and 10; and
- (2) A determination of the applicability of adjustments of a comparable nature under chapter 89C, Hawaii Revised Statutes, to excluded employees.

Funds appropriated under this section shall be allocated and expended by the State, Hawaii health systems corporation, and the judiciary for the purposes of and in accordance with this section, including but not limited to the terms and conditions of the applicable settlement agreements.

The state departments, Hawaii health systems corporation, and the judiciary employing members of collective bargaining units 1 and 10 and employees subject to chapter 89C, Hawaii Revised Statutes, as applicable, that are funded by non-general funds shall reimburse the general fund for the respective amounts payable under this section.

SECTION 8. The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks issued by the comptroller; provided that departments must obtain the approval of the attorney general before payment of any claim can be made.

SECTION 9. Notwithstanding the sums hereinabove stated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which that statute applies.

PART III

SECTION 10. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2005, shall lapse.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 29, 2004.)

Note

1. H.B. No. 1800, Act 41.

A Bill for an Act Relating to Nurses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 457-8.6, Hawaii Revised Statutes, is amended to read as follows:

“§457-8.6 Prescriptive authority for advanced practice registered nurses. (a) The board shall grant prescriptive authority to qualified advanced practice registered nurses and shall designate the requirements for advanced nursing practice related to prescriptive authority. The board of medical examiners shall submit an annual report of all amendments made to the formularies to the board of nursing.

(b) The department of commerce and consumer affairs shall establish a joint formulary advisory committee composed of:

- (1) Two persons licensed as advanced practice registered nurses and appointed by the board of nursing;
- (2) Two persons licensed in medicine by the board of medical examiners and appointed by the board of medical examiners;
- (3) Three persons licensed as pharmacists and appointed by the board of pharmacy;
- (4) One representative of the John A. Burns school of medicine appointed by the dean of the University of Hawaii school of medicine; and
- (5) One representative from a school of nursing with an advanced practice registered nurse program.

The joint formulary advisory committee shall recommend the applicable formulary for persons recognized under this section. The board of medical examiners shall consider the recommendations of the joint formulary advisory committee in adopting the formulary. A collegial working relationship with licensed physicians shall be reflected in rules adopted by the board of nursing in accordance with chapter 91.

The board of nursing shall establish nursing requirements for education, experience, and national certification pursuant to rules adopted in accordance with chapter 91.”

SECTION 2. Act 192, Session Laws of Hawaii 2002, as amended by Act 3, section 27, Session Laws of Hawaii 2003, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 2002, [and] provided that sections 2 and 3 shall be repealed on June 30, 2004, except that title 16, chapter 89C, Hawaii administrative rules, shall remain in effect until the board of nursing adopts rules pursuant to section [2 of this Act; and provided that section 457-8.6, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.] 457-8.6, Hawaii Revised Statutes.”

SECTION 3. The joint formulary advisory committee shall submit a report to the legislature on its activities and recommendations with respect to the prescriptive authority formulary for advanced practice registered nurses no later than twenty days prior to the convening of the 2005 regular session. The report shall also include a report to the joint formulary advisory committee from the board of medical examiners that clearly justifies its denial of any recommendations made by the committee.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2004.

(Approved June 29, 2004.)

ACT 151

H.B. NO. 2472

A Bill for an Act Relating to the Sale of Sterile Syringes for the Prevention of Disease.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the sharing of needles by intravenous drug users is a major cause of the spread of HIV, Hepatitis B, Hepatitis C, and other fatal blood-borne diseases. Act 292, Session Laws of Hawaii 2001 (Act 292), authorized the sale of sterile syringes by licensed physicians, pharmacists, and other health care providers in an effort to reduce the transmission of blood-borne diseases by reducing the use of infected syringes as well as through prevention education.

Since 2002, the department of health has developed, printed, and distributed fifty-five thousand copies of "Safe Syringe Disposal Options" to local pharmacies. Syringe wholesalers have also agreed to distribute the brochures statewide. Approximately sixteen thousand syringes purchased in pharmacies have been exchanged through the sterile syringe exchange program. The program has produced results that continue to benefit the general public.

The purpose of this Act is to repeal, in part, the sunset provision of Act 292 to make permanent the sale of syringes by qualified individuals to prevent the transmission of deadly blood-borne diseases.

SECTION 2. Act 292, Session Laws of Hawaii 2001, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval; provided that section 1 shall take effect on July 1, 2002, and section 2 shall be repealed on July 1, 2004."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 2004.

(Approved June 29, 2004.)

ACT 152

S.B. NO. 2748

A Bill for an Act Relating to Drug Demand Reduction Assessments.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 205, Session Laws of Hawaii 1995, as amended by section 1 of Act 7, Session Laws of Hawaii 1996, as amended by section 3 of Act 152,

Session Laws of Hawaii 1998, as amended by section 1 of Act 116, Session Laws of Hawaii 2001, is amended as follows:

1. By amending section 1 to read:

“SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§706- Drug demand reduction assessments; special fund.** (1) In addition to any disposition authorized by chapter 706 or 853, any person ~~[convicted]~~ who is:

- (a) ~~Convicted of [a felony or misdemeanor] an offense under part IV of chapter 712, except [section] sections 712-1250.5[, or any person charged] and 712-1257;~~
- (b) ~~Convicted under section 707-702.5;~~
- (c) ~~Convicted of a felony or misdemeanor offense under part IV of chapter 329;~~
- (d) ~~Convicted under section 291-3.1, 291-3.2, 291-3.3, 291E-61, or 291E-61.5;~~
- (e) ~~Found in violation of part III of chapter 291E; or~~
- (f) ~~Charged with [such an] any offense under paragraphs (a) to (d) who has been granted a deferred acceptance of guilty or no contest plea [may];~~

shall be ordered to pay a monetary assessment under subsection (2), except as provided under subsection (6).

(2) Monetary assessments for individuals subject to subsection (1) shall not [exceeding] exceed the following:

- (a) \$3,000 when the offense is a class A felony;
- (b) \$2,000 when the offense is a class B felony;
- (c) \$1,000 when the offense is a class C felony; [or]
- (d) \$500 when the offense is a misdemeanor[-]; or
- (e) \$250 when the person has been found guilty of an offense under section 712-1249, 291-3.1, 291-3.2, 291-3.3, 291E-61, or has been found in violation of part III of chapter 291E.

Notwithstanding sections 706-640 and 706-641 and any other law to the contrary, the assessments provided by this section shall be in addition to and not in lieu of, and shall not be used to offset or reduce, any fine authorized or required by law.

~~[(2)] (3) There is established a special fund to be known as the “drug demand reduction assessments special fund” to be administered by the department of health. The disbursement of [moneys] money from the drug demand reduction assessments special fund shall be used to supplement [drug] substance abuse treatment and other [drug] substance abuse demand reduction programs.~~

~~[(3)] (4) All monetary assessments paid and interest accrued on funds collected pursuant to this section shall be deposited into the drug demand reduction assessments special fund.~~

~~[(4)] (5) Restitution to the victim of a crime enumerated in subsection (1) shall be made, and probation fees and crime victim compensation fees imposed under part III of chapter 706 shall be paid, before payment of the monetary assessment.~~

~~[(5) The court shall not order the defendant to pay the monetary assessment unless the defendant is or will be able to pay the monetary assessment.]~~

(6) If the court determines that the person has the ability to pay the monetary assessment and is eligible for probation or will not be sentenced to incarceration, unless otherwise required by law, the court may order the person to undergo a substance abuse treatment program at the person’s expense. If the person undergoes a substance abuse treatment program at the person’s expense, the court may waive or

reduce the amount of the monetary assessment. Upon a showing by the person that the person lacks the financial ability to pay all or part of the monetary assessment, the court may waive or reduce the amount of the monetary assessment.

2. By amending section 4 to read:

“SECTION 4. This Act shall take effect upon its approval [~~and shall be repealed on June 30, 2004~~].”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 29, 2004.

(Approved June 29, 2004.)

ACT 153

S.B. NO. 2930

A Bill for an Act Relating to Home and Community-Based Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 273, Session Laws of Hawaii 2001, as amended by Acts 95 and 98, Session Laws of Hawaii 2003, is amended by amending section 1 to read as follows:

“SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . HOME AND COMMUNITY-BASED CASE MANAGEMENT AGENCIES AND COMMUNITY CARE FOSTER FAMILY HOMES

§346-A Definitions. As used in this part:

“Assisted living facility” means an assisted living facility as defined in section 321-15.1.

“Certificate of approval” means the certificate issued by [~~a home and community-based case management agency,~~] the department or its designee that authorizes a person, agency, or organization to operate a community care foster family home.

“Client” means any person who receives home and community-based case management services to reside in a community care foster family home, expanded adult residential care home, or assisted living facility.

“Community care foster family home” or “home” means a home that, for the purposes of this part:

- (1) [~~Pursuant to section 346-B(a)(1), as applicable to the case management agency demonstration project in any county having a population of 500,000 or more persons:~~

- (A) Is regulated by the department of [~~human services~~] in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;

- ~~[(B)]~~ (2) Is issued a certificate of approval by ~~[a home and community-based case management agency]~~ the department or its designee to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, at least one of whom shall be a medicaid recipient, who are at the nursing facility level of care, [and] who are unrelated to the foster family[;], and are receiving the services of a licensed home and community-based case management agency; and
- ~~[(C)]~~ (3) Does not include expanded adult residential care homes[;] or assisted living facilities, which shall continue to be licensed by the department of health[; ~~or~~
- (2) Pursuant to section 346-B(a)(2), as applicable to the case management agency demonstration project in any county having a population of less than 500,000 persons:
- (A) Is issued a certificate of approval by a home and community-based case management agency to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, who are at the nursing facility level of care and who are unrelated to the foster family; and
- (B) Does not include expanded adult residential care homes, which shall continue to be licensed by the department of health].

["Department" means the department of human services.]

"Designee" means a person, institution, organization, or agency authorized by the department to issue certificates of approval to community care foster family homes and to monitor these homes for certificate compliance and quality assurance. The department's designee shall perform these functions for the department and shall not at the same time function as a home and community-based case management agency or a community care foster family home as defined in this section.

"Expanded adult residential care home" means any facility providing twenty-four-hour living accommodations, for a fee, to adults unrelated to the family, who require at least minimal assistance in the activities of daily living, personal care services, protection, and health care services, and who may need the professional health services provided in an intermediate or skilled nursing facility.

"Home and community-based case management agency" means ~~[an]~~ any person, agency, or organization licensed by the department to ~~[locate,]~~ provide, coordinate, and monitor comprehensive services to meet the needs of [medicaid recipients and other adults] clients whom the agency [places] serves in a community care foster family home or any medicaid clients in an expanded adult residential care home[;], or an assisted living facility.

"License" means an approval issued by the department or its authorized agents for ~~[an]~~ a person, agency, or organization to operate as a home and community-based case management agency.

§346-B Applicability. (a) Prior to June 30, ~~[2004,]~~ 2006, this part shall apply ~~[equally to two distinct demonstration projects, except as provided in subsection (b), as follows:~~

- (1) ~~In any county having a population of 500,000 persons or more; and~~
- (2) ~~In any county having a population of less than 500,000 persons.] to the demonstration project statewide.~~

(b) ~~[Each demonstration project implemented under this part shall operate under its own distinct definition of "community care foster family home," as provided in section 346-A. In addition, for the demonstration project under subsec-~~

~~tion (a)(1);~~ Community care foster family homes shall be required to reserve at least one bed for medicaid patients.

§346-C Home and community-based case management agency, authority over and evaluation of. (a) ~~[The home and community-based case management agency shall be responsible for certifying community care foster family homes. No] Any person, agency, or organization [shall engage in locating,] engaged in providing, coordinating, or monitoring comprehensive services to [individuals] clients in community care foster family homes [and in issuing certificates of approval to community care foster family homes, unless it meets], or medicaid clients in expanded adult residential care homes, and assisted living facilities, shall meet the standards of conditions, management, and competence set by the department and [is issued] hold a license in good standing issued for this purpose by the department.~~

(b) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards for the organization and administration of home and community-based case management agencies;
- (2) Standards of conditions, management, and competence of home and community-based case management agencies;
- (3) Procedures for obtaining and renewing a license from the department; and
- ~~[(4) Minimum standards of conditions and competence for the operation of community care foster family homes that are to be used by home and community-based case management agencies as certification requirements of community care foster family homes; and~~
- ~~[(5)] (4) Minimum grievance procedures for [certified community care foster family homes and recipients] clients of case management services.~~

(c) As a condition for obtaining a license, a person, agency, or organization shall ~~[meet the requirements set forth in]~~ comply with rules adopted under subsection (b)(1), (2), and (3), and satisfy the ~~[criminal history]~~ background check requirements under section 346-E. The department may deny a license if:

- (1) An operator, employee, or new employee of the home and community-based case management agency has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; ~~[or]~~
- (2) ~~[If the]~~ The department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety, or well being of adults receiving care in community care foster family homes~~[-], expanded adult residential care homes, or assisted living facilities;~~
- (3) An operator, employee, or new employee of the home and community-based case management agency is a perpetrator of abuse as defined in section 346-222; or
- (4) The holder of or an applicant for a home and community-based case management agency license, or one of its employees, has a certificate of approval to operate a community care foster family home, or a license from the department of health to operate an adult residential care home, expanded adult residential care home, or assisted living facility.

(d) Upon approval of any home and community-based case management agency, the department or its authorized agents shall issue a license, which shall continue in force for one year, or for two years if a home and community-based case management agency has been licensed for at least one year and is in good standing pursuant to standards adopted by the department, unless sooner revoked for cause. The department or its authorized agents shall renew the license only if, after an

annual or biennial evaluation, the agency continues to meet the standards established by the department.

(e) The department shall evaluate the home and community-based case management agency to determine compliance with the requirements established under this section:

- (1) Annually or biennially; or
- (2) Upon receipt of a complaint that the home and community-based case management agency is in violation of the requirements established under this section.

(f) The department may suspend or revoke a license if the department deems that the agency is unwilling or unable to comply with the rules adopted under this section; provided that:

- (1) Upon suspension or revocation of a license, the home and community-based case management agency shall no longer be licensed and shall immediately notify ~~[those community care foster family homes it certified;]~~ the agency's clients and community care foster family homes, expanded adult residential care homes, and assisted living facilities in which the agency is providing services to clients;
- (2) ~~[A]~~ A home and community-based case management agency whose license has been suspended or revoked may appeal the suspension or revocation [in accordance with chapter 91, but the appeal shall not stay the suspension or revocation;] to the department through its established process, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked license may be reinstated if the department deems that the agency is willing and able to comply with the rules adopted under this section; and
- (4) A revoked license shall be restored only after a new application is made and reviewed under this part.

(g) Any home and community-based case management agency shall be subject to investigation by the department at any time and in the manner, place, and form as provided in the department's rules.

(h) The department shall adopt standard forms of contract that the home and community-based case management agency shall use with each of its clients, community care foster family homes, ~~[and]~~ expanded adult residential care homes[;], and assisted living facilities.

(i) The department shall establish a review board consisting of three operators of community care foster family homes and three operators of expanded adult residential care homes. The review board shall monitor referrals and placements of clients by each home and community-based case management agency on a monthly basis. Each home and community-based case management agency shall be required to provide monthly reports to the review board.

(j) The home and community-based case management agency shall have a fiduciary duty to each ~~[medicaid recipient and other adult it places in a community care foster family home or expanded adult residential care home]~~ client it serves.

(k) A home and community-based case management agency shall not enter into an agreement that requires a community care foster family home to accept that agency's clients exclusively.

§346-D Community care foster family home, authority over and evaluation of. (a) ~~[No]~~ Any person in any household [shall] who wants to take in, for a fee, any adult who is at the nursing facility level of care and who is unrelated to anyone in the household, for twenty-four-hour living accommodations, including personal care and homemaker services, [unless] may do so only after the household meets the required standards established for certification and obtains a certificate of

approval from ~~[a home and community-based case management agency;]~~ the department or its designee.

~~[(b) Home and community-based case management agencies shall issue certificates of approval based on compliance with the standards required for certification, pursuant to section 346-C(b)(4), and any additional requirements established by the agencies and agreed upon by the homes.]~~ (b) The department shall adopt rules pursuant to chapter 91 relating to:

- (1) Standards of conditions and competence for the operation of community care foster family homes;
- (2) Procedures for obtaining and renewing a certificate of approval from the department; and
- (3) Minimum grievance procedures for clients of community care foster family home services.

(c) As a condition for obtaining a certificate of approval, community care foster family homes shall comply with [requirements set forth in section 346-C(b)(4)] rules adopted under subsection (b) and satisfy the [criminal history record] background check requirements under section 346-E. The [certifying agency] department or its designee may deny a certificate of approval if:

- (1) An operator or other adult residing in the community care foster family home, except for adults receiving care, has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less; [or]
- (2) [If the certifying agency] The department or its designee finds that the criminal history record of an operator or other adult residing in the home, except for adults receiving care, poses a risk to the health, safety, or well being of adults in care[-]; or
- (3) An operator or other adult residing in the community care foster family home, except for adults receiving care, is a perpetrator of abuse as defined in section 346-222.

(d) Upon approval of a community care foster family home, the [home and community-based case management agency] department or its designee shall issue a certificate of approval that shall continue in force for one year, or for two years if a community care foster family home has been certified for at least one year and is in good standing pursuant to standards adopted by the department, unless sooner suspended or revoked for cause[-]; provided that:

- (1) The agency may suspend or revoke a certificate of approval if the agency deems that a community care foster family home is unwilling or unable to comply with the rules adopted under section 346-C(b)(4). The suspension or revocation shall be immediate when conditions exist that constitute an imminent danger to life, health, or safety of adults receiving care;
- (2) A community care foster family home whose certificate of approval has been suspended or revoked may appeal to the certifying agency through its established appeal process, but the appeal shall not stay the suspension or revocation;
- (3) A suspended or revoked certificate of approval may be reinstated if the certifying agency deems that the home is willing and able to comply with the rules adopted under section 346-C(b)(4);
- (4) A revoked certificate of approval shall be restored only after a new application for a certificate of approval is submitted to the agency and approved; and].
- [(5)] The [home and community-based case management agency] department or its designee shall renew the certificate of approval only if, after an annual or biennial evaluation, the home continues to meet the standards required for certification.

(e) Any community care foster family home shall be subject to investigation by the department ~~[and home and community-based case management agencies]~~ or its designee at any time and in the manner, place, and form as provided in procedures to be established by the department ~~[and home and community-based case management agencies]~~.

(f) The department or its designee may suspend or revoke a certificate of approval if the department or its designee deems that a community care foster family home is unwilling or unable to comply with the rules adopted under subsection (b); provided that:

- (1) The suspension or revocation shall be immediate when conditions exist that constitute an imminent danger to life, health, or safety of adults receiving care;
- (2) A community care foster family home whose certificate of approval has been suspended or revoked shall immediately notify its clients and their case managers;
- (3) A community care foster family home whose certificate of approval has been suspended or revoked may appeal to the department through its established process, but the appeal shall not stay the suspension or revocation;
- (4) A suspended or revoked certificate of approval may be reinstated if the department or its designee deems that the home is willing and able to comply with the rules adopted under subsection (b); and
- (5) A revoked certificate of approval shall be restored only after a new application for a certificate of approval is submitted to the department or its designee and approved.

(g) Any community care foster family home shall be subject to monitoring and evaluation by the department or its designee for certification compliance and quality assurance on an annual or biennial basis.

§346-E [Criminal history record] Background checks. (a) The department shall develop standards to ensure the reputable and responsible character of operators and employees of the home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as defined in this chapter~~;~~ ~~which shall include but not be limited to criminal history record checks in accordance with section 846—].~~

(b) An applicant for a home and community-based case management agency license and operators, employees, and new employees of a home and community-based case management agency shall ~~[be subject to criminal history record checks in accordance with section 846—, and shall provide consent to obtain other criminal history record information for verification.];~~

- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, “adult abuse perpetrator check” means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual’s name and birth date in the department’s adult protective service file; and
- (3) Provide consent to the department to conduct an adult abuse perpetrator check and to obtain other criminal history record information for verification.

(c) New employees of the home and community-based case management agency shall be fingerprinted within five working days of employment, for the purpose of complying with the criminal history record check requirement.

(d) The department or its designee shall obtain criminal history record information through the Hawaii criminal justice data center on applicants for home and community-based case management agency licenses, and operators, employees, and new employees of home and community-based case management agencies. The Hawaii criminal justice data center may assess the applicants and operators, employees, and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

(e) The department shall make a name inquiry into the criminal history records and the adult protective service file for the first two years a home and community-based case management agency is licensed and annually or biennially thereafter depending on the licensure status of the home and community-based case management agency.

~~[(e)] (f) An applicant for a certificate of approval as a community care foster family home and operators and other adults residing in a community care foster family home shall [be subject to criminal history record checks in accordance with section 846—, and shall obtain other criminal history record information for verification.];~~

(1) Be subject to criminal history record checks in accordance with section 846-2.7;

(2) Be subject to adult abuse perpetrator checks, if the individual has direct contact with a client. For the purposes of this section, "adult abuse perpetrator check" means a search to determine whether an individual is known to the department as a perpetrator of abuse as defined in section 346-222, by means of a search of the individual's name and birth date in the department's adult protective service file; and

(3) Provide consent to the department to conduct an adult abuse perpetrator check and to obtain other criminal history record information for verification.

(g) ~~The [certifying agency] department~~ or its designee shall obtain criminal history record information through the Hawaii criminal justice data center on ~~[all]~~ applicants for certificates of approval as community care foster family homes and operators and other adults residing in ~~[the]~~ community care foster family ~~[home,] homes,~~ except for adults receiving care~~[- subject to certification pursuant to this section].~~ The Hawaii criminal justice data center may assess the applicants and operators and other adults a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

(h) ~~The [certifying agency] department~~ or its designee shall make a name inquiry into the criminal history records and the adult protective service file for the first two years a community care foster family home is certified and annually or biennially thereafter depending on the certification status of the community care foster family home.

§346-F Penalty. Any person violating this part or any rule made pursuant to this part shall be fined not more than \$500."

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SECTION 2. Act 273, Session Laws of Hawaii 2001, as amended by Act 95 and Act 98, Session Laws of Hawaii 2003, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 2001, and shall be repealed on June 30, ~~[2004.]~~ 2006.”

SECTION 3. The department of human services shall submit a report to the legislature no later than twenty days prior to the regular session of 2006 detailing the impact changes made to Act 273, Session Laws of Hawaii 2001, as amended by Acts 95 and 98, Session Laws of Hawaii 2003, by this Act have had in addressing concerns raised in state auditor's report number 02-22, issued December 2002, regarding conflicts of interest in the certification of community care foster family homes and the department's monitoring of home and community-based case management agencies and community care foster family homes.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2004; provided that Section 1 shall take effect on February 1, 2005.

(Approved June 29, 2004.)

Note

1. Prior to amendment “.,” appeared here.

ACT 154

S.B. NO. 1491

A Bill for an Act Relating to State Government.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to make various appropriations for fiscal year 2004-2005.

SECTION 2. Act 200, Session Laws of Hawaii 2003, is amended by amending item F-32 of section 3 to read:

“HHL602 - PLANNING, DEVELOPMENT, MANAGEMENT, AND GENERAL SUPPORT FOR HAWAIIAN HOMESTEADS

		29.00*	[—29.00* 18.00*
OPERATING	HHL	1,297,007A	[1,277,007A 775,293A
		89.00*	[—89.00* 100.00*
	HHL	7,115,343B	[7,172,586B 7,847,893B
INVESTMENT CAPITAL	HHL	600,000C	C”

SECTION 3. Provided that no state funds appropriated for fiscal year 2004-2005 to purchase the one thousand one hundred and twenty-nine acre property on the north shore of Oahu bordered by Paumalu gulch, Pupukea-Paumalu forest reserve, and Kalunawaikaala gulch and stream shall be made available unless matched by:

- (1) The federal government on a 2:1 (federal/state) basis; and
- (2) The city and county of Honolulu on a 1:1 (county/state) basis.

SECTION 4. Provided that of the revolving fund appropriations for University of Hawaii, Manoa (UOH 100), the sum of \$2,531,561 for fiscal year 2004-2005 shall be used for the operations of the new medical school campus at Kakaako and the new Kakaako university health science library; provided further that the university may use funds from the research and training revolving fund or any other revolving fund of the University of Hawaii to provide for these expenses.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Filipino Centennial Celebration Commission.

The sum appropriated shall be expended by the ethnic group presentations program of the department of accounting and general services for the purposes of this section.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Friends of Waipahu Cultural Garden Park.

The sum appropriated shall be expended by the performing and visual arts events program of the department of accounting and general services for the purposes of this section.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Maui Community Arts and Cultural Center.

The sum appropriated shall be expended by the performing and visual arts events program of the department of accounting and general services for the purposes of this section.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Chamber of Commerce of Hawaii for its Military Affairs Council.

The sum appropriated shall be expended by the business development and marketing program of the department of business, economic development, and tourism for the purposes of this section.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$20,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the 442nd RCT Foundation.

The sum appropriated shall be expended by the services to veterans program of the department of defense for the purposes of this section.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Waikoloa Community Based Substance Abuse Rehabilitation and Recovery Program.

The sum appropriated shall be expended by the alcohol and drug abuse program of the department of health for the purposes of this section.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Legal Aid Society of Hawaii.

The sum appropriated shall be expended by the judiciary for the purposes of this section.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii County Economic Opportunity Council.

The sum appropriated shall be expended by the office of community services of the department of labor and industrial relations for the purposes of this section.

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$117,901 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Kauai Economic Opportunity, Inc.

The sum appropriated shall be expended by the office of community services of the department of labor and industrial relations for the purposes of this section.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$20,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Assistive Technology Resource Centers of Hawaii.

The sum appropriated shall be expended by the office of community services of the department of labor and industrial relations for the purposes of this section.

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to ORI Anuenue Hale, Inc.

The sum appropriated shall be expended by the office of community services of the department of labor and industrial relations for the purposes of this section.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Volunteer Resource Center of Hawaii.

The sum appropriated shall be expended by the office of community services of the department of labor and industrial relations for the purposes of this section.

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Aha Hui E Kala.

The sum appropriated shall be expended by the parks administration program of the department of land and natural resources for the purposes of this section.

SECTION 18. There is appropriated out of federal funds the sum of \$59,232 or so much thereof as may be necessary for fiscal year 2004-2005 for two temporary

plant quarantine inspector I (dog handler) positions for brown tree snake interdiction (AGR 122 - plant, pest, and disease control).

The sum appropriated shall be expended by the department of agriculture for the purposes of this section.

SECTION 19. There is appropriated out of interdepartmental transfer funds the sum of \$29,616 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent plant quarantine inspector I (dog handler) position to meet the requirements of the record of decision for Kahului airport expansion (AGR 122 - plant, pest, and disease control).

The sum appropriated shall be expended by the department of agriculture for the purposes of this section.

SECTION 20. There is appropriated out of:

(1) The irrigation system revolving fund the sum of \$10,546; and

(2) The agricultural park special fund the sum of \$10,546,

or so much thereof as may be necessary for fiscal year 2004-2005 for one temporary clerk typist II position (.50 FTE per means of financing) required for the operation of the irrigation systems and agricultural park programs (AGR 141 - agricultural resource management).

The sums appropriated shall be expended by the department of agriculture for the purposes of this section.

SECTION 21. There is appropriated out of the certification services revolving fund the sum of \$74,052 or so much thereof as may be necessary for fiscal year 2004-2005 for three temporary agricultural commodity aid I positions relating to seed certification and papaya export certification (AGR 151 - quality and price assurance).

The sum appropriated shall be expended by the department of agriculture for the purposes of this section.

SECTION 22. There is appropriated out of the public utilities commission special fund the sum of \$104,664 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent engineer IV and one permanent investigator IV positions for the regulation of public utility service companies operating in the state (BUF 901 - transportation, communications, and utilities).

The sum appropriated shall be expended by the department of budget and finance for the purposes of this section.

SECTION 23. There is appropriated out of the compliance resolution fund the sum of \$1,891,438 or so much thereof as may be necessary for fiscal year 2004-2005 for four permanent positions and for other current expenses to operate the program (CCA 102 - cable television).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 24. There is appropriated out of the compliance resolution fund the sum of \$2,473,837 or so much thereof as may be necessary for fiscal year 2004-2005 for twenty-three permanent positions and for other current expenses to operate the program (CCA 103 - consumer advocate for communication, utilities, and transportation services).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

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SECTION 25. There is appropriated out of the compliance resolution fund the sum of \$2,153,836 or so much thereof as may be necessary for fiscal year 2004-2005 for twenty-nine permanent positions and for other current expenses to operate the program (CCA 104 - financial institution services).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 26. There is appropriated out of the compliance resolution fund the sum of \$7,315,818 or so much thereof as may be necessary for fiscal year 2004-2005 for seventy-six permanent positions and for other current expenses to operate the program (CCA 106 - insurance regulatory services).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 27. There is appropriated out of the compliance resolution fund the sum of \$1,348,447 or so much thereof as may be necessary for fiscal year 2004-2005 for sixteen permanent and four temporary positions and for other current expenses to operate the program (CCA 110 - office of consumer protection – unfair and deceptive practices).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 28. There is appropriated out of the compliance resolution fund the sum of \$5,477,813 or so much thereof as may be necessary for fiscal year 2004-2005 for seventy-one permanent and ten temporary positions and for other current expenses to operate the program (CCA 111 - business registration).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 29. There is appropriated out of the compliance resolution fund the sum of \$5,197,764 or so much thereof as may be necessary for fiscal year 2004-2005 for seventeen permanent and fifty-one temporary positions and for other current expenses to operate the program (CCA 112 - regulated industries complaints office).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 30. There is appropriated out of the compliance resolution fund the sum of \$4,820,442 or so much thereof as may be necessary for fiscal year 2004-2005 for forty permanent and nine temporary positions and for other current expenses to operate the program (CCA 191 - general support – protection of the consumer).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 31. There is appropriated out of the compliance resolution fund the sum of \$60,960 or so much thereof as may be necessary for fiscal year 2004-2005 for increases in fringe benefit costs (CCA 105 - professional, vocational, and personal services).

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this section.

SECTION 32. There is appropriated out of federal funds the sum of \$367,548 or so much thereof as may be necessary for fiscal year 2004-2005 for two

permanent building maintenance helper, two permanent truck driver, one permanent plumber I, one permanent carpenter I, one permanent general construction maintenance supervisor, two permanent building maintenance worker II, one permanent automotive mechanic I, one permanent electrician I, and one permanent social services aid III positions for the operation and maintenance of public housing (HMS 220 - rental housing services).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 33. There is appropriated out of the state low income housing revolving fund the sum of \$125,340 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent building maintenance helper, one permanent general construction maintenance supervisor I, one permanent procurement and supply specialist III, and one permanent general laborer II positions for the operation and maintenance of public housing (HMS 220 - rental housing services).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 34. There is appropriated out of federal funds the sum of \$222,336 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent engineer IV, one permanent building construction inspector II, one permanent building engineer V, one permanent state housing development administrator, and one temporary housing development specialist I positions for facilities development of affordable housing (HMS 225 - private housing development and ownership).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 35. There is appropriated out of the private housing development and ownership revolving fund the sum of \$110,532 or so much thereof as may be necessary for fiscal year 2004-2005 for one temporary housing development specialist III and one temporary housing development specialist II positions for facilities development of affordable housing (HMS 225 - private housing development and ownership).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 36. There is appropriated out of revolving funds the sum of \$142,044 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent housing loan services officer, three permanent clerk typist II, and one temporary loan processing assistant I positions for the operation and delivery of affordable housing (HMS 227 - housing finance).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 37. There is appropriated out of federal funds the sum of \$162,516 or so much thereof as may be necessary for fiscal year 2004-2005 for six permanent positions to adjudicate and process disability claims of Hawaii residents for social security disability insurance and social security income (HMS 238 - disability determination).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 38. There is appropriated out of:

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(1) The general revenues of the State of Hawaii the sum of \$45,144; and
(2) Federal funds the sum of \$45,144,
or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent registered professional nurse V (\$33,294 in general funds and \$33,294 in federal funds) and one permanent social service assistant IV (\$11,850 in general funds and \$11,850 in federal funds) positions for the delivery of adult medical services (HMS 601 - adult and community care services branch).

The sums appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 39. There is appropriated out of the general revenues of the State of Hawaii the sum of \$114,293 or so much thereof as may be necessary for fiscal year 2004-2005 for one .50 temporary health care financing assistant, two .50 permanent eligibility program specialist, one permanent .50 eligibility worker III, one permanent .50 account clerk II, one permanent .25 regular professional nurse VI, one temporary .50 clerk typist II, and two permanent .50 clerk typist II positions for the assistance of medical payments (HMS 902 - general support for health care payments).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 40. There is appropriated out of federal funds the sum of \$141,077 or so much thereof as may be necessary for fiscal year 2004-2005 for one .50 temporary health care financing assistant, two .50 permanent eligibility program specialist, one permanent .50 eligibility worker III, one permanent .50 account clerk II, one permanent .75 regular professional nurse VI, one temporary .50 clerk typist II, and two permanent .50 clerk typist II positions for the assistance of medical payments (HMS 902 - general support for health care payments).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 41. There is appropriated out of the general revenues of the State of Hawaii the sum of \$71,722 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent data processing systems analyst IV and one permanent computer programmer V positions for operational support (HMS 904 - general administration).

The sum appropriated shall be expended by the department of human services for the purposes of this section.

SECTION 42. There is appropriated out of the Hawaiian home administration account the sum of ~~\$675,307~~ \$0¹ or so much thereof as may be necessary for fiscal year 2004-2005 for one private secretary III, one supervising land agent, one secretary III, one mortgage loan specialist, one commission chair, one engineer VI, two homestead assistant II, one accountant III, one heavy equipment operator, and one clerk typist III positions (HHL 602 - planning, development, management, and general support for Hawaiian homesteads).

The sum appropriated shall be expended by the department of Hawaiian home lands for the purposes of this section.

SECTION 43. There is appropriated out of federal funds the sum of \$149,892 or so much thereof as may be necessary for fiscal year 2004-2005 for 4.50 permanent workforce development specialist positions to provide services to persons seeking employment, job training, and job development services (LBR 111 - placement services).

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 44. There is appropriated out of the employment and training fund the sum of \$69,269 or so much thereof as may be necessary for fiscal year 2004-2005 for two temporary workforce development positions to assist employers by developing training programs to upgrade the skills of employees (LBR 111 - placement services).

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 45. There is appropriated out of:

(1) Federal funds the sum of \$74,214; and

(2) The general revenues of the State of Hawaii the sum of \$74,214, or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent environmental health specialist, one permanent occupational safety and health program specialist, and one permanent occupational safety and health advisor positions to provide services to employers that are aimed at promoting safety in the workplace (LBR 143 - occupational safety and health).

The sums appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 46. There is appropriated out of federal funds the sum of \$198,639 or so much thereof as may be necessary for fiscal year 2004-2005 for 5.25 permanent unemployment insurance specialist, one permanent auditor, one permanent clerk typist, and .50 permanent clerk positions to meet workload increases and provide timely unemployment benefits (LBR 171 - unemployment compensation).

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 47. There is appropriated out of federal funds the sum of \$133,788 or so much thereof as may be necessary for fiscal year 2004-2005 for two permanent research statistician, one permanent statistics clerk, and one permanent clerk typist positions to meet federal reporting requirements for research and statistical reports (LBR 901 - DLIR - data gathering, research, and analysis).

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 48. There is appropriated out of federal funds the sum of \$99,954 or so much thereof as may be necessary for fiscal year 2004-2005 for 2.16 permanent data processing systems analyst and .54 permanent clerk typist positions to provide the federal match for positions to implement and support information technology projects for the department (LBR 902 - general administration).

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 49. There is appropriated out of federal funds the sum of \$70,056 or so much thereof as may be necessary for fiscal year 2004-2005 for one temporary accountant and three temporary clerk positions for activities related to the accounting of federal fund expenditures (LBR 902 - general administration).

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

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SECTION 50. There is appropriated out of federal funds the sum of \$53,376 or so much thereof as may be necessary for fiscal year 2004-2005 for one permanent program specialist position for the delivery of services to the economically disadvantaged, immigrants, and refugees (LBR 903 - office of community services).

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 51. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 52. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 53. This Act shall take effect upon its approval.

(Approved June 30, 2004.)

Note

1. Item vetoed, replaced, and initialed "LL" on July 13, 2004.

ACT 155

H.B. NO. 2703

A Bill for an Act Relating to Impact Fees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to clarify county authority to assess impact fees for state highway improvements. This Act also establishes a new special fund for the department of transportation to administer county impact fees assessed for state highway projects.

SECTION 2. Chapter 264, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . IMPACT FEES

§264-A Definitions. As used in this part, unless the context requires otherwise:

"Capital costs" means part or all of the cost for capital improvements. Capital costs may include costs to acquire right-of-way, plan, design, engineer, finance, and construct improvements including costs of management and consultant fees. Capital costs shall not include periodic maintenance and other operating costs.

"County" means a county having a population in excess of five hundred thousand.

"Department" means the department of transportation.

"Development" means any artificial change to real property that requires a county grading or building permit including but not limited to construction, expansion, enlargement, alteration, or erection of buildings or structures.

"Director" means the director of transportation.

"Impact fee" means an assessment on a development used to incrementally fund a fair share of the capital costs of public highway improvements reasonably needed to serve that development.

"State highway improvements" means capital improvements to the physical infrastructure of state highways.

§264-B Highway development special fund. (a) There is established in the state treasury the highway development special fund to be administered by the department, into which shall be deposited:

- (1) Transfers of county impact fees assessed under part VIII of chapter 46 and this part to pay for state highway improvements;
- (2) Interest from investment of deposits; and
- (3) Legislative and county appropriations.

(b) Moneys in the highway development special fund shall be used for the following purposes:

- (1) Capital costs of qualifying proposed state highway improvements;
- (2) Reevaluation of the need, geographic limitations, amount, and use of impact fees;
- (3) Transfers to reimburse other special funds for expenditures which otherwise might have been funded with moneys in the highway development special fund;
- (4) Transfers under sections 36-27 and 36-30;
- (5) Refunds under section 264-D; and
- (6) The department's costs to implement this part, including but not limited to costs to administer the highway development special fund.

(c) The department may establish accounts in the highway development special fund as necessary to implement this part and rules adopted by the department.

§264-C Authority to assess impact fees; needs assessment study. (a) A county may assess, impose, levy, collect, and transfer to the department impact fees for any development pursuant to ordinances adopted under section 46-142 and this part, and the department is authorized to receive those funds for state highway improvements.

(b) Prior to the assessment, imposition, levy, collection, or transfer to the department of impact fees pursuant to this section, the director shall approve a needs assessment study that shall identify the kinds of state highway improvements for which the fees shall be imposed by the county pursuant to part VIII of chapter 46.

§264-D Refund of impact fees to county. Upon the request of a county, the department shall refund impact fees transferred to the highway development special fund which have not been expended or encumbered for purposes established under this part within six years after collection under part VIII of chapter 46.

§264-E Adoption of rules. The department may adopt rules pursuant to chapter 91 to implement this part.

§264-F County ordinances and rules. Notwithstanding section 264-C, no county shall assess impact fees for state highway improvements without the director's consent.

§264-G Limitations on actions. A civil lawsuit contesting an action by the department or a county under this part or under part VIII of chapter 46 shall be filed within sixty calendar days after the date of the action."

SECTION 3. Section 46-143, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) The pro rata amount of each impact fee shall be based upon the development and actual capital cost of public facility expansion, or a reasonable estimate thereof, to be incurred [~~by the county or board~~].

(d) An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred ~~[by the county or the board]~~ in accommodating the development. The following seven factors shall be considered in determining a proportionate share of public facility capital improvement costs:

- (1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study that identifies:
 - (A) Deficiencies in existing public facilities;
 - (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and
 - (C) Additional demands anticipated to be placed on specified public facilities by a development;
- (2) The availability of other funding for public facility capital improvements, including but not limited to user charges, taxes, bonds, inter-governmental transfers, and special taxation or assessments;
- (3) The cost of existing public facility capital improvements;
- (4) The methods by which existing public facility capital improvements were financed;
- (5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions;
- (6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; and
- (7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision.”

SECTION 4. Statutory material to be repealed is bracketed and stricken.

SECTION 5. The revisor of statutes shall substitute appropriate section numbers for the letters used to designate the new sections in section 2 of this Act.

SECTION 6. This Act shall take effect upon its approval, provided that sections 2 and 3 shall take effect retroactive to October 1, 2002.

(Approved June 30, 2004.)

ACT 156

S.B. NO. 2045

A Bill for an Act Making an Appropriation to the Hawaii Civil Air Patrol.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Hawaii civil air patrol needs state funding to allow it to continue the vital operations of search and rescue and medical emergency transport. The civil air patrol depends on state funding to defray its

operational expenses. Recent budget restrictions have adversely affected the civil air patrol in Hawaii.

The civil air patrol is an official auxiliary of the United States Air Force that provides, among other things, volunteer emergency services. The funding cuts have caused:

- (1) Termination of weekly tsunami watch patrols;
- (2) Impairment of notification to essential personnel of emergencies; and
- (3) Scaling back of the cadet program.

Since the early 1950s, the civil air patrol has provided tsunami warning services to the State. Once a tsunami alert has been issued by the National Weather Service, the civil air patrol mobilizes and gets its aircraft in the air, making repeated passes over beaches and coastal communities using sirens and loudspeakers to warn residents.

The civil air patrol flies more than eighty-five per cent of all federal inland search and rescue missions. Approximately one hundred people are saved every year by civil air patrol volunteers. For example, the civil air patrol was instrumental in locating a small plane that went down on Maui in July, 2002.

Even more vital is the role the civil air patrol plays in disaster relief. Volunteer civil air patrol members fly disaster relief officials to remote locations and support local, state, and national disaster relief organizations with experienced pilots and personnel. The civil air patrol transports time-sensitive medical materials, blood products, and body tissue.

Today, as a peacetime auxiliary of the United States Air Force, the Hawaii civil air patrol remains an active volunteer organization with about six hundred members, including two hundred cadets. The Hawaii wing has three primary missions: search and rescue, aerospace education, and the cadet program. It is also an active participant in counter-drug operations for the Drug Enforcement Administration, flying over one hundred seventy-nine missions last year.

The purpose of this Act is to make an appropriation to the Hawaii civil air patrol to assist in defraying operational expenses.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 2004-2005 to be matched dollar-for-dollar by the Hawaii department of defense, for operational expenses of the Hawaii civil air patrol.

The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved June 30, 2004.)

ACT 157

S.B. NO. 2840

A Bill for an Act Relating to Tobacco.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to address some of the issues relating to tobacco products. Specifically, Part I of this Act prohibits the distribution of untaxed cigarettes via telephone, mail order, the Internet, or other on-line sources and revises the seizure and confiscation authority of the department of the attorney general to address the availability of low-priced cigarettes to underage smokers. Part

II of this Act limits supersedeas bond amounts for tobacco master settlement signatories to ensure their ability to continue to make settlement payments.

PART I

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§245- Unlawful shipment of cigarettes; penalty; reports; liability for unpaid taxes. (a) A person or entity commits the offense of unlawful shipment of cigarettes if the person or entity is engaged in the business of selling cigarettes and:

- (1) Ships or causes to be shipped any cigarettes to a person or entity in this State that is not:
 - (A) A licensee under this chapter; or
 - (B) An export warehouse proprietor pursuant to chapter 52 of the Internal Revenue Code, or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or
- (2) Ships or causes to be shipped any cigarettes to a person or entity in this State in any container or wrapping, other than the cigarette manufacturer's original container or wrapping, and the container or wrapping is not plainly and visibly marked with the word “cigarette”.

(b) This section shall not apply to the shipment of cigarettes if any of the following conditions are met:

- (1) The cigarettes are exempt from taxes as provided by section 245-3(b) or are otherwise exempt from the applicability of this chapter as provided by section 245-62;
- (2) All applicable Hawaii taxes on the cigarettes are paid in accordance with the requirements of this chapter; or
- (3) The person or entity engaged in the business of selling, advertising, or offering cigarettes for sale and transfer or shipment:
 - (A) Has fully complied with all of the requirements of chapter 10A (commencing with section 375) of title 15 of the United States Code, otherwise known as the Jenkins Act; and
 - (B) Includes on the outside of the shipping container an externally visible and easily legible notice located on the same side of the shipping container as the address to which the shipping container is delivered stating as follows:

“CIGARETTES: HAWAII LAW PROHIBITS THE SALE OF CIGARETTES TO INDIVIDUALS UNDER EIGHTEEN YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID TAXES ON THESE CIGARETTES.”

(c) Unlawful shipment of cigarettes is a class C felony if the person or entity knowingly ships or causes to be shipped one thousand or more cigarettes in violation of subsection (a).

(d) Unlawful shipment of cigarettes is a misdemeanor if the person or entity knowingly ships or causes to be shipped less than one thousand cigarettes in violation of subsection (a).

(e) For purposes of this section, a person or entity is a licensee if the person or entity's name appears on a list of authorized licensees published by the department.

(f) Any person or entity that is required to comply with the requirements of chapter 10A (commencing with section 375) of title 15 of the United States Code, otherwise known as the Jenkins Act, shall file such a report with the department on or before the tenth day of each calendar month.

(g) Notwithstanding the existence of other remedies at law, any person or entity that purchases, uses, controls, or possesses any cigarettes for which the applicable taxes imposed under title 14, Hawaii Revised Statutes, have not been paid, shall be liable for the applicable taxes, plus any penalty and interest as provided for by law."

SECTION 3. Section 245-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Ship” or “causes to be shipped” means to send by any means of transportation, including by vessel, vehicle, or aircraft.”

SECTION 4. Section 245-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “dealer” to read:

““Dealer” means any person coming into the possession of cigarettes or tobacco products[, or any person rendering a distribution service who buys and maintains, at the person’s place of business, a stock of cigarettes or tobacco products] which have not been acquired from [a wholesaler or dealer licensed] an authorized permit holder or licensee under this chapter, [and who distributes or uses such cigarettes or tobacco products.] or any person rendering a distribution service who buys and maintains, at the person’s place of business, a stock of cigarettes or tobacco products that have not been acquired from a licensee and who distributes or uses such cigarettes or tobacco products.”

2. By amending the definition of “distribute” to read:

““Distribute”, “distributes”, or “distribution” means to sell, ship, transfer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.”

3. By amending the definition of “sale” to read:

““Sale” includes every act of selling[.] and includes any sale or act of selling that originates from any order that is placed or submitted by means of a telephonic or other method of voice transmission, the mail, or any other delivery service, or the Internet or other online service.”

SECTION 5. Section 245-40, Hawaii Revised Statutes, is amended to read as follows:

“[§245-40] Forfeitures; disposition. Any cigarette, package of cigarettes, [or] carton of cigarettes, or container of cigarettes unlawfully possessed, kept, stored, acquired, transported, [or] sold, imported, offered, received, or distributed in violation of this [part] chapter may be seized and confiscated by the attorney general and ordered forfeited pursuant to chapter 712A.”

SECTION 6. Section 245-62, Hawaii Revised Statutes, is amended to read as follows:

“[§245-62] Applicability. (a) This [part] chapter shall not apply to:

- (1) Cigarettes allowed to be imported or brought into the United States for personal use free of federal tax or duty or voluntarily abandoned to the United States Secretary of Treasury at the time of entry; [or]
- (2) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of [Title 19

U.S.C.] section 1555(b) of Title 19, United States Code, and any implementing regulations; provided that this [part] chapter shall apply to any [such] cigarettes that are brought back into the customs territory for resale within the customs territory[-]; or

- (3) A delivery service when engaged in the business of transporting or delivering packages or other containers of cigarettes, if the delivery service is not a knowing accomplice in any act that circumvents the requirements of this chapter. The department and the attorney general shall retain inspection and investigation authority under this chapter. The delivery service shall provide the department or the attorney general with access to inspect any shipments of any cigarettes and shall provide any information, including shipping and delivery documents, deemed necessary to verify compliance with the requirements of this chapter.

(b) As used in this section:

“Delivery service” means an entity, including the United States Postal Service (as defined in section 102 of title 39, United States Code), that is engaged in the commercial transport or delivery by water, land, or air of letters, packages, merchandise, or other containers whether or not the entity actually operates the vessel, vehicle, or aircraft by which the transportation is provided.

“Shipping documents” or “delivery documents” include but are not limited to bills of lading, air bills, or any other documents, records, or documentation in whatever format, including electronic format used to evidence the undertaking by a delivery service to ship, transport, or deliver letters, packages, merchandise, or other containers.”

PART II

SECTION 7. The legislature finds that the payments that the State receives from tobacco companies under the tobacco master settlement agreement fund vitally important public programs, and it is in the State’s interest to protect the continued receipt of these funds.

The legislature further finds that the tobacco companies that make payments to the State pursuant to the tobacco master settlement agreement are involved in extensive litigation that on occasion produces verdicts in the hundreds of millions or billions of dollars. As in other states, were such a verdict entered against the tobacco companies in Hawaii, the only way they could protect their assets, and hence their ability to make their tobacco master settlement agreements payments to the State while they appeal, would be to post a supersedeas bond that could equal or exceed the amount of the judgment. The companies may not be able to post such a bond, and this could adversely impact their ability to continue to meet their obligations under the tobacco master settlement agreement.

The legislature further finds that twenty-four states have recognized this, and these states have passed legislation limiting the size of supersedeas bonds, sometimes in legislation that applies to all litigants and other times in legislation that applies only to tobacco master settlement agreement signatories, successors, and affiliates. By limiting the amount of the bond that defendants must post to stay the execution of the judgment during appeal, such legislation guarantees that tobacco master settlement agreement signatories, affiliates, and successors will be able to appeal a judgment while continuing to make their payments to Hawaii and other states. A supersedeas bond limit would not in any way affect the outcome of the appeal or the ultimate ability of the plaintiff to prevail in the appeal. It would only ensure that the tobacco companies are able fully to use their constitutional right to

appeal, while protecting the interest of the State in the receipt of its tobacco master settlement agreement funds during the course of appeal.

Accordingly, the purpose of this part is to safeguard the flow of funds under the tobacco master settlement agreement to the State, by limiting the supersedeas bond that tobacco master settlement agreement signatories and their successors and affiliates must post to stay the execution of a judgment during appeal to \$150,000,000 regardless of the amount of the judgment. This part also provides for a higher bond amount, up to the full amount of the judgment, if the court determines that the appellant is dissipating assets to avoid the payment of a judgment.

SECTION 8. Chapter 328L, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§328L- Limitation on bond requirements in litigation involving master settlement agreement signatories, successors, and affiliates. (a) In civil litigation under any legal theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco master settlement agreement, the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total bond that is required of all appellants collectively shall not exceed \$150,000,000, regardless of the amount of the judgment.

(b) Notwithstanding subsection (a), if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the full amount of the judgment.”

PART III

SECTION 9. Part I of this Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect on July 1, 2004. Part II of this Act shall apply to all cases pending on or filed on or after its effective date.

(Approved June 30, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 158

S.B. NO. 2690

A Bill for an Act Relating to Emergency Medical Services.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that rapid response of emergency medical services is critical for positive outcomes for emergency patients. The need to provide adequate emergency medical care to residents of rural areas, particularly on the neighbor islands, is vital. There is also a need to expand emergency medical services

on Oahu to meet nationally recognized guidelines for advanced life support response time to medical emergencies.

The legislature further finds that funding for emergency medical services has always been a critical issue. User fees for emergency medical services are deposited into the general fund but are not an adequate source of funding for emergency medical services.

The legislature further finds that the retention and recruitment of paramedics plays an essential role in maintaining a top-notch emergency medical service.

The purpose of this Act is to establish an emergency medical services special fund through additional state vehicle registration fees for the department of health to use in operating the State's comprehensive emergency medical services system. There exists a direct nexus between the use of motor vehicles and the need for emergency medical services. In addition, the Act provides funds for additional ambulance services for parts of Oahu, Maui, and Hawaii. The Act further provides for development and training for paramedics to address the recruitment and retention issue that would impede the State's emergency medical services system.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part XVIII to be appropriately designated and to read as follows:

“§321- Emergency medical services special fund. (a) There is established within the state treasury a special fund to be known as the emergency medical services special fund to be administered and expended by the department.

(b) The moneys in the special fund shall be used by the department for operating a state comprehensive emergency medical services system including enhanced and expanded services, and shall not be used to supplant funding for emergency medical services authorized prior to the effective date of this Act.

(c) Fees remitted pursuant to section 249-31, interest and investment earnings attributable to the moneys in the special fund, legislative appropriations, and grants, donations, and contributions from private or public sources for the purposes of the fund, shall be deposited into the special fund.

(d) The department shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session that outlines the receipts of, and expenditures from, the special fund.”

SECTION 3. Section 249-31, Hawaii Revised Statutes, is amended to read as follows:

“§249-31 State registration fee. (a) All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections 249-3 to 249-6 shall be subject to a [§20] \$25 annual vehicle registration fee. The fee shall become due and payable on January 1, and shall be paid before April 1 in each year together with all other taxes and fees levied by this chapter; provided that should any county elect to renew motor vehicle registrations on a staggered basis as authorized by section 286-51, the state registration for that county shall likewise be staggered so that the state registration fee is due and payable at the same time and shall be collected together with the county fee. The state registration fee shall be deemed delinquent if not paid with the county registration fee. The respective counties shall collect this fee together with the vehicle registration tax collected for the county and shall transfer the moneys collected under this section to the State to be paid into the state highway fund.

(b) From each annual motor vehicle registration fee, the director shall deposit \$20 into the state highway fund and \$5 into the emergency medical services special fund.”

PART II

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,205,000 for fiscal year 2004-2005, to be deposited into the emergency medical services special fund.

SECTION 5. The legislature finds that the Waianae Coast in Leeward Oahu has only one ambulance, which is insufficient to serve the emergency medical needs of the over forty thousand residents living in Waianae, Nanakuli, and Maili. Waianae is also one of several areas on Oahu where back-up response time standards may be exceeded. The growing population and relative isolation of the area make improving emergency health services there critical.

The legislature further finds that on the Waianae Coast, ninety per cent of emergency calls are answered within an average of fifteen minutes, but thirty per cent of those calls must be handled by adjacent emergency response units, usually by the ambulance stationed at St. Francis Medical Center West in Ewa Beach, twenty miles from Makaha.

The legislature finds that in addition to the Leeward Coast, from Waianae to Makakilo, Kahaluu-Kaaawa and urban Honolulu areas lack sufficient emergency medical services commensurate with their population growth and high rates of motor vehicle crashes, medical emergencies, and other trauma. This situation combined with the fact that Hawaii finds itself in an ongoing state of heightened readiness, especially by first-responders, in response to the potential for terrorist attacks, creates a need for an increased level of medical self-sustainability due to the extremely limited availability of mutual aid resources posed by our island geography.

Accordingly, the legislature determines that it is necessary to provide funding for an emergency ambulance, to include personnel, equipment, and operational expenses for an emergency ambulance unit serving the Leeward Coast, including Makakilo, and Kahaluu-Kaaawa, and urban Honolulu areas.

SECTION 6. There is appropriated out of the emergency medical services special fund, the sum of \$1,500,000, or so much thereof as may be necessary for fiscal year 2004-2005, for an additional ambulance to serve the residents of and visitors of the Leeward Coast, including Makakilo.

The sum appropriated shall be expended by the department of health for the purpose of section 5.

SECTION 7. There is appropriated out of the emergency medical services special fund the sum of \$430,000, or so much thereof as may be necessary for fiscal year 2004-2005, to upgrade the rapid response unit in urban Honolulu to a 24/7 advance life support unit.

The sum appropriated shall be expended by the department of health for the purpose of section 5.

SECTION 8. There is appropriated out of the emergency medical services special fund the sum of \$351,622, or so much thereof as may be necessary for fiscal year 2004-2005, to establish a 16-hour, 7-day rapid response unit in the Kahaluu-Kaaawa area.

The sum appropriated shall be expended by the department of health for the purpose of section 5.

SECTION 9. The legislature finds that the Kihei/Wailea region of Maui is the State's fastest growing community, as well as a tourist center, that includes only

one twenty-four hour, locally based, advanced life support ambulance service for its residents and visitors. Thus, in emergency situations occurring when the single overburdened ambulance is already on call, the response time of ambulances from nearby communities increases by an additional twenty to thirty minutes, depending on the location of the ambulance. The legislature further finds that in many emergency medical situations, this prolonged response time can mean the difference between life and death for individuals visiting or living in this community.

The legislature intends to provide parity in emergency health care for residents and visitors of the Kihei/Wailea region of Maui by providing an additional twenty-four hour advanced life support ambulance service.

SECTION 10. There is appropriated out of the emergency medical services special fund the sum of \$850,000, or so much thereof as may be necessary for fiscal year 2004-2005, to provide sufficient twenty-four hour advanced life support ambulance services for the Kihei/Wailea region of Maui.

The sum appropriated shall be expended by the department of health for the purpose of section 9.

SECTION 11. The legislature finds that unacceptably long and potentially life-threatening delays in emergency ambulance service have occurred in the Hawaiian Ocean View Estates area of the island of Hawaii. These delays, which can last up to two hours, occur when the Ka'u ambulance—located in Naalehu—is already on call. Although emergency medical technicians with the fire department can provide basic life support until a back-up advanced life support ambulance with mobile intensive care technicians arrives on scene, there is a vast difference between the level of care that each kind of technician is qualified to provide. Delays in the provision of appropriate emergency medical care because of geography are inhumane and unfair.

Consequently, the legislature finds a need to appropriate funds to the department of health to provide emergency advanced life support ambulance service to the residents of Hawaiian Ocean View Estates on the island of Hawaii. Additionally, the residents of the Hawaiian Ocean View Estates area have secured a charitable foundation grant to provide for the vehicle itself.

SECTION 12. There is appropriated out of the emergency medical services special fund the sum of \$750,680, or so much thereof as may be necessary for fiscal year 2004-2005, to staff the ambulance at Hawaiian Ocean View Estates, including operating expenses for supplies, equipment, and vehicle maintenance.

The sum appropriated shall be expended by the department of health for the purpose of section 11.

PART III

SECTION 13. The legislature finds that retention and recruitment of highly qualified paramedics is a challenge and a top priority for Hawaii. The legislature further finds that professional development and training for paramedics is a good way to address the challenge of retention and recruitment of paramedics, which was identified as a top priority in keeping Hawaii's emergency response system in top shape at the 2003 Hawaii EMS Agenda for the Future Summit.

SECTION 14. There is appropriated out of the emergency medical services special fund the sum of \$350,000, or so much thereof as may be necessary for fiscal year 2004-2005, for:

- | | |
|---|-----------|
| (1) Development and training instructor for Kauai | \$ 75,000 |
|---|-----------|

- (2) Video conference system to connect Kauai, Maui, and Hawaii with EMS Instruction on Oahu \$ 75,000
- (3) Paramedic training equipment for Kauai, Maui, and Hawaii \$200,000

The sum appropriated shall be expended by the department of health for the purpose of section 13.

SECTION 15. The purpose of this section is to provide a mechanism for the department of health to reimburse the general fund for start-up costs associated with this Act. The department of health shall deposit into the general fund from moneys collected and deposited into the emergency medical services special fund pursuant to section 249-31, Hawaii Revised Statutes, an amount equal to \$2,205,000, no later than June 30, 2006.

PART IV

SECTION 16. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 18. This Act shall take effect on July 1, 2004; provided that section 3 shall take effect on October 1, 2004.

(Approved July 1, 2004.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 159

H.B. NO. 2883

A Bill for an Act Relating to Wireless Enhanced 911 Service.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that statewide enhanced 911 has proven to be a lifesaving service and that routing a 911 call to the appropriate public safety answering point with a display of the caller's identification and location should be available for all users of telecommunications services, regardless of the technology used to make and transmit the 911 call. The legislature also finds that it is in the best interest of the public to ensure that there is adequate ongoing funding to support enhanced 911 service.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER ENHANCED 911 SERVICES FOR MOBILE PHONES

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

“Automatic location identification” means a wireless enhanced 911 service capability that enables the automatic display of information indicating the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the Federal Communications Commission order.

“Automatic number identification” means a wireless enhanced 911 service capability that enables the automatic display of the ten-digit wireless telephone number used to place a 911 call in accordance with the Federal Communications Commission order.

“Board” means the wireless enhanced 911 board established under this chapter.

“Commercial mobile radio service” means commercial mobile radio service under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, August 10, 1993, 107 Stat. 312.

“Commercial mobile radio service connection” means each active wireless telephone number assigned to a commercial mobile radio service customer, including end-users of resellers whose place of primary use is within the State.

“Federal Communications Commission order” means the original order issued in the Federal Communications Commission Docket No. 94-102 governing wireless enhanced 911 service and any other Federal Communication Commission orders related to the provision of wireless enhanced 911 service.

“Proprietary information” means customer lists and other related information (including the number of customers), technology descriptions, technical information, or trade secrets, and the actual or developmental costs of wireless enhanced 911 service that are developed, produced, or received internally by a wireless provider or by a provider’s employees, directors, officers, or agents.

“Public safety agency” means a functional division of the State or county that provides or has authority to provide, or a private entity contracted by a state or county agency that provides, firefighting, law enforcement, ambulance, medical, or other emergency services.

“Public safety answering point” means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to those calls.

“Reseller” means a person or entity that purchases commercial mobile radio service from a wireless provider for the purpose of reselling commercial mobile radio service to end-users.

“Wireless enhanced 911 commercial mobile radio service costs” means all capital, nonrecurring, and recurring costs directly related to the implementation and operation of phase I or phase II wireless enhanced 911 services pursuant to the Federal Communications Commission order.

“Wireless enhanced 911 fund” or “fund” means the statewide special fund established to ensure adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service in Hawaii.

“Wireless provider” means a person or entity that is authorized by the Federal Communications Commission to provide facilities-based commercial mobile radio service within the State.

§ -2 Wireless enhanced 911 board. (a) There is created within the department of accounting and general services, for administrative purposes, a wireless enhanced 911 board consisting of eleven voting members; provided that the membership shall consist of:

- (1) The director of health or the director’s designee;

- (2) Three representatives from wireless providers, who shall be appointed by the governor as provided in section 26-34, except as otherwise provided by law;
 - (3) One representative each from the public safety answering points for Oahu, Hawaii, Kauai, Maui, and Molokai, who shall be appointed by the governor, as provided in section 26-34, except as otherwise provided by law, from a list of five names submitted by each respective public safety answering point;
 - (4) The consumer advocate or the consumer advocate's designee; and
 - (5) One representative of the current wireline provider of enhanced 911.
- (b) Six members either in person or by proxy, pursuant to subsection (g), shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board; provided that three of the six members constituting a quorum shall be representatives of the wireless providers and three shall be representatives of public safety answering points, except as provided in section -8(c).
- (c) The chairperson of the board shall be elected by the members of the board by simple majority and shall serve a term of one year.
- (d) The board shall meet upon the call of the chairperson, but not less than quarterly.
- (e) The members representing wireless providers shall be appointed by the governor for terms of two years, except that terms of the two members initially appointed shall be for eighteen months.
- (f) Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall apply only in so far as it relates to succession, vacancies, and suspension of board members, and as provided in subsection (a).
- (g) A member may vote by proxy submitted in writing to the board.
- (h) The members shall serve without compensation. Members shall be entitled to reimbursements from the wireless enhanced 911 fund for reasonable traveling expenses incurred in connection with the performance of board duties.
- (i) The board or its chairperson, with the approval of the board, may retain independent, third party accounting firms, consultants, or other third party to:
- (1) Create reports, make payments into the fund, process checks, and make distributions from the fund, as directed by the board and as allowed by this chapter; and
 - (2) Perform administrative duties necessary to administer the fund or oversee operations of the board, including providing technical advisory support.
- (j) The board shall develop reasonable procedures to ensure that all wireless providers receive adequate notice of board meetings and information concerning board decisions.

§ -3 Wireless enhanced 911 fund. There is established outside the state treasury a special fund, to be known as the wireless enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under section -4. Moneys paid into the fund are not general fund revenues of the State. The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State. Moneys in the fund shall be expended exclusively by the board for the purposes of ensuring adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service and for expenses of administering the fund.

§ -4 Surcharge. (a) A monthly wireless enhanced 911 surcharge, subject to this chapter, shall be imposed upon each commercial mobile radio service connection.

(b) The effective date of the surcharge shall be July 1, 2004. The rate of the surcharge shall be set at 66 cents per month for each commercial mobile radio service connection. The surcharge shall have uniform application and shall be imposed on each commercial mobile radio service connection operating within the state except:

- (1) Connections billed to federal, state, and county government entities; and
- (2) Prepaid connections.

(c) All wireless providers and resellers shall bill to and collect from each of their customers a monthly surcharge at the rate established for each commercial mobile radio service connection. The wireless provider or reseller may list the surcharge as a separate line item on each bill. If a wireless provider or reseller receives a partial payment for a monthly bill from a commercial mobile radio service customer, the wireless provider or reseller shall apply the payment against the amount the customer owes the wireless provider or reseller, before applying the partial payment against the surcharge.

(d) A wireless provider that:

- (1) Is collecting the surcharge and remitting appropriate portions of the surcharge to the fund pursuant to this chapter; and
- (2) Has been requested by a public safety answering point to provide phase I or phase II wireless enhanced 911 service in a particular county or counties,

may recover wireless enhanced 911 commercial mobile radio service costs as provided in this chapter.

(e) Each wireless provider or reseller may retain two per cent of the amount of surcharges collected to offset administrative expenses associated with billing and collecting the surcharge.

(f) A wireless provider or reseller shall remit to the wireless enhanced 911 fund, within sixty days after the end of the calendar month in which the surcharge is collected, an amount that represents the surcharges collected less amounts retained for administrative expenses incurred by the wireless provider or reseller, as provided in subsection (e).

(g) The surcharges collected by the wireless provider or reseller pursuant to this section shall not be subject to any tax, fee, or assessment, nor are they considered revenue of the provider or reseller.

(h) Each customer who is subject to this chapter shall be liable to the State for the surcharge until it has been paid to the wireless provider. Wireless providers shall have no liability to remit surcharges that have not been paid by customers. A wireless provider or reseller shall have no obligation to take any legal action to enforce the collection of the surcharge for which any customer is billed. However, the board may initiate a collection action against the customer. If the board prevails in such a collection action, reasonable attorney's fees and costs shall be awarded.

(i) At any time the members deem it necessary and appropriate, the board may meet to make recommendations to the legislature as to whether the surcharge and fund should be discontinued, continued as is, or amended.

(j) When considering whether to discontinue, continue as is, or amend the fund or surcharge, the board's recommendations shall be based on the latest available information concerning costs associated with providing wireless enhanced 911 service in accordance with the Federal Communications Commission order.

§ -5 Recovery from the fund. (a) After January 1, 2005, every public safety answering point shall be eligible to seek reimbursement from the fund solely to pay for the reasonable costs to lease, purchase, or maintain all necessary equipment, including computer hardware, software, and database provisioning,

required by the public safety answering point to provide technical functionality for the wireless enhanced 911 service pursuant to the Federal Communications Commission order. All other expenses necessary to operate the public safety answering point, including but not limited to those expenses related to overhead, staffing, and other day-to-day operational expenses, shall continue to be paid through the general funding of the respective counties.

(b) After January 1, 2005, each wireless provider may request reimbursement from the fund of wireless enhanced 911 commercial mobile radio service costs incurred; provided that the costs:

- (1) Are recoverable under section -4(d); and
- (2) Have not already been reimbursed to the wireless provider from the fund.

In no event shall a wireless provider be reimbursed for any amount above its actual wireless enhanced 911 commercial mobile radio service costs allowed to be recovered under section -4(d).

(c) After the expenses of the board are paid, the public safety answering points shall be allocated two-thirds of the remaining balance of the fund. The remaining one-third shall be available for wireless provider cost recovery. The board shall determine the reimbursement amounts for the public safety answering points, based on the limitations set forth in section -5(a). The reimbursement level for each wireless provider shall be limited:

- (1) To the total contribution made by the wireless provider to the wireless provider cost recovery portion of the fund; and
- (2) As provided in section -5(b).

§ **-6 Report to the legislature.** The board shall submit an annual report to the legislature, including:

- (1) The total aggregate surcharge collected by the State in the last fiscal year;
- (2) The amount of disbursement from the fund;
- (3) The recipient of each disbursement and a description of the project for which the money was disbursed;
- (4) The conditions, if any, placed by the board on disbursements from the fund;
- (5) The planned expenditures from the fund in the next fiscal year;
- (6) The amount of any unexpended funds carried forward for the next fiscal year;
- (7) A cost study to guide the legislature towards necessary adjustments to the fund and the monthly surcharge; and
- (8) A progress report of jurisdictional readiness for wireless E911 services, including public safety answering points, wireless providers, and wireline providers. The report shall include the status of requirements outlined in the FCC Order 94-102 and subsequent supporting orders related to phase I and phase II wireless 911 services.

§ **-7 Audit.** (a) During any period in which a wireless enhanced 911 surcharge is imposed upon customers, the board may request an audited report prepared by an independent certified public accountant that demonstrates that the request for cost recovery from public safety answering points and wireless providers recovers only costs and expenses directly related to the provision of phase I or phase II wireless enhanced 911 service as authorized by this chapter. The cost of the audited reports shall be considered expenses of the board. The board shall prevent public disclosure of proprietary information contained in the audited report, unless required by court order or appropriate administrative agency decision.

(b) The board shall select an independent third party to audit the fund every two years to determine whether the fund is being managed in accordance with this chapter. The board may use the audit to determine whether the amount of the surcharge assessed on each commercial mobile radio service connection is required to be adjusted. The costs of the audit shall be an administrative cost of the board recoverable from the fund.

§ -8 Proprietary information. (a) All proprietary information submitted to the board by any third party used by the board in connection with its duties or any public safety answering point in deploying wireless 911 service shall be retained in confidence. Proprietary information submitted pursuant to this chapter shall not be released to any person, other than to the submitting wireless provider or reseller, the board, or any independent, third-party accounting firm retained by the board, without the express permission of the submitting wireless provider or reseller. General information collected by the board shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual wireless provider.

(b) The board, any third parties it may retain, and any public safety answering point shall take appropriate measures to maintain the confidentiality of the proprietary information that may be submitted by a wireless provider. The board shall hold all propriety information in confidence and shall adopt reasonable procedures to prevent disclosure or providing access to the proprietary information to the public and competitors, including members of the board representing other wireless providers. Members of the board shall not disclose the information to any third parties, including their employers, without the written consent of the wireless provider whose proprietary information is to be disclosed.

(c) A committee consisting of all board members, except the three wireless provider representatives, shall have the power to act for the board on the specific matters defined by the board, when at least two-thirds of the members of the board determine that a board action may be conducted by the committee to prevent disclosure of proprietary information to the wireless provider representatives.

§ -9 Limitation of liability. (a) Notwithstanding any law to the contrary, in no event shall any wireless provider, reseller, or their respective employees, directors, officers, assigns, affiliates, or agents, except in cases of gross negligence or wanton and wilful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to a person or from damage to property incurred by any person in connection with any act or omission in developing, designing, adopting, establishing, installing, participating in, implementing, maintaining, or providing access to phase I or phase II wireless enhanced 911 or any other wireless service intended to help persons obtain emergency assistance. In addition, no wireless provider, reseller, or their respective employees, directors, officers, assigns, affiliates, or agents shall be liable for civil damages or criminal liability in connection with the release of customer information to any governmental entity, including any public safety answering point, as required under this chapter.

(b) In no event shall any public safety answering point, or its employees, assigns, or agents, or emergency response personnel, except in cases of gross negligence or wanton and wilful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to the person or from damage to property incurred by any person in connection with any act or omission in the development, installation, maintenance, operation, or provision of phase I or phase II wireless enhanced 911 service.

§ -10 Database or location information. (a) Any commercial mobile radio service location information obtained by any public safety answering point or public safety agency or its personnel for public safety purposes is not a government record open to disclosure under chapter 92F.

(b) A person shall not disclose or use, for any purpose other than the wireless enhanced 911 calling system, information contained in the database of the wireless provider's network portion of the wireless enhanced 911 calling system established pursuant to this chapter, without the prior written consent of the wireless provider.

§ -11 Dispute resolution. (a) Any wireless provider, reseller, or public safety answering point aggrieved by a decision of the board shall have the right to petition the board for reconsideration within ten days following the rendering of the board's decision. As part of its petition for reconsideration, the aggrieved party may present any reasonable evidence or information for the board to consider. The board shall render its decision on the reconsideration petition as soon as reasonably possible, but no later than thirty days after the reconsideration request is made.

(b) An aggrieved party, following the completion of the reconsideration petition process, upon agreement of the other party, may have the dispute resolved through final and binding arbitration by a single arbitrator in accordance with the Wireless Industry Arbitration Rules of the American Arbitration Association. The costs of the arbitration, including the fees and expenses of the arbitrator, shall be borne by the nonprevailing party of any arbitration proceeding. The arbitrator's decision shall be final and binding and may be confirmed and enforced in any court of competent jurisdiction.

(c) Nothing in this section shall preclude any wireless provider, reseller, or public safety answering point from pursuing any existing right or remedy to which it is entitled in any court having jurisdiction thereof.

§ -12 Service contracts. A wireless provider shall not be required to provide wireless enhanced 911 service until the wireless provider and the public safety answering point providing wireless enhanced 911 service in the county or counties in which the wireless provider is licensed to provide commercial mobile radio service have entered into a written agreement setting forth the basic terms of service to be provided."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved July 1, 2004.)

ACT 160

S.B. NO. 2936

A Bill for an Act Relating to Medical Assistance for Pregnant Legal Immigrants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The department of human services recognizes that a gap exists in medical assistance coverage for pregnant women who are medicaid income eligible. While low-income pregnant women who are United States citizens are

provided medical assistance by medicaid and low-income noncitizens who are from the Compact of Free Association countries are provided state-funded medical assistance, low-income pregnant legal immigrants who have lived in the United States for less than five years are not eligible for any medical assistance.

Timely and regular prenatal care enhances the birth of a healthy baby, lessens the probability of a complicated delivery or a low-weight baby with health problems, and prevents additional medically necessary services. The State must provide these additional costly services for the newborns of these low-income immigrant women because their newborns are United States citizens and are eligible for medicaid.

The purpose of this Act is to authorize the department of human services to provide state-funded medical assistance for a legal immigrant who enters the United States on or after August 22, 1996, who is age nineteen or older, who is pregnant, and whose countable family income does not exceed one hundred and eighty-five per cent of the federal poverty level for Hawaii. This eligibility criteria is the same eligibility criteria for pregnant women who are citizens and eligible for medicaid or for pregnant women from the Compact of Free Association countries. Prenatal care coverage for these pregnant women will provide the healthiest start for their newborns and reduce medicaid costs.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Medical assistance for other pregnant women. (a) The department may provide state-funded medical assistance to a pregnant woman age nineteen years of age or older whose countable family income does not exceed one hundred and eighty-five per cent of the federal poverty level for a family of applicable size, including the expected unborn children. The pregnant woman shall be:

- (1) A legal immigrant who entered the United States on or after August 22, 1996; and
- (2) Otherwise eligible for benefits under the State’s medicaid program but is prohibited from participating in any medical assistance program under Title XIX of the Social Security Act for a period of five years beginning on the date of her entry into the United States, due to restricted eligibility rules imposed by Title XIX of the Social Security Act and the Personal Responsibility and Work Reconciliation Act of 1996.

(b) Once determined eligible for medical assistance under this section, the pregnant woman shall continue to be eligible throughout her pregnancy and through the last day of the calendar month in which the sixty-day period following childbirth ends.

(c) Assets shall not be evaluated for eligibility purposes.

(d) The director shall adopt rules pursuant to chapter 91 to determine eligibility for medical assistance.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved July 1, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 161

H.B. NO. 2297

A Bill for an Act Relating to Guardianship and Protective Proceedings.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Article V of chapter 560, Hawaii Revised Statutes, is amended by adding four new parts to read as follows:

“PART 1. GENERAL PROVISIONS

§560:5-101 Short title. Parts 1 through 4 of this article may be cited as the Uniform Guardianship and Protective Proceedings Act.

§560:5-102 Definitions. In parts 1 through 4 of this article:

“Conservator” means a person who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.

“Court” means either a circuit court in this State having jurisdiction in matters relating to the affairs of decedents or the family court, depending on which court has subject matter jurisdiction under section 560:5-106.

“Guardian” means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent, spouse, reciprocal beneficiary, or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

“Incapacitated person” means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.

“Kokua kanawai” means an individual appointed by a court who has the role and authority granted under rule 113 of the Hawaii probate rules.

“Legal representative” includes an attorney, a representative payee, a guardian or conservator acting for a respondent in this State or elsewhere, a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary, and an agent designated under a power of attorney, whether for health care or property, in which the respondent is identified as the principal.

“Minor” means an unemancipated individual who has not attained eighteen years of age.

“Parent” means a parent whose parental rights have not been terminated.

“Protected person” means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

“Respondent” means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

“Ward” means an individual for whom a guardian has been appointed.

§560:5-103 RESERVED.

§560:5-104 Facility of transfer. (a) Unless a person required to transfer money or personal property to a minor knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the estate of the minor is pending, the person may do so, as to an amount or value not exceeding \$10,000 a year, by transferring it to:

- (1) A person who has the care and custody of the minor and with whom the minor resides;

- (2) A guardian of the minor;
- (3) A custodian under chapter 553A, the Uniform Transfers To Minors Act or custodial trustee under chapter 554B, the Uniform Custodial Trust Act; or
- (4) A federally-insured financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor.

(b) A person who transfers money or property in compliance with this section is not responsible for its proper application.

(c) A guardian or other person who receives money or property for a minor under subsection (a)(1) or (2) shall only apply it to the support, care, education, health, and welfare of the minor, and may not derive a personal financial benefit except for reimbursement for necessary expenses. Any excess shall be preserved for the future support, care, education, health, and welfare of the minor, and any balance shall be transferred to the minor upon emancipation or attaining majority.

§560:5-105 Delegation of power by parent or guardian. A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person for a period not exceeding one year, which time limit shall be expressly stated in the document, any power regarding the care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.

§560:5-106 Subject matter jurisdiction. This article applies to, and the court has jurisdiction over, guardianship and related proceedings for individuals domiciled or present in this State, protective proceedings for individuals domiciled in or having property located in this State, and property coming into the control of a guardian or conservator who is subject to the laws of this State.

- (1) Circuit court jurisdiction. The circuit court shall have concurrent jurisdiction over guardianships and related proceedings concerning incapacitated adults. The circuit court shall not have jurisdiction over guardianships and related proceedings concerning minors. The circuit court shall have exclusive jurisdiction over conservatorship proceedings and those proceedings under part 4 of this article, for both adults and minors;
- (2) Family court jurisdiction. The family court shall have exclusive jurisdiction over guardianships and related proceedings concerning minors and concurrent jurisdiction over guardianship and related proceedings concerning incapacitated adults. The family court shall have exclusive jurisdiction over guardianship proceedings concerning minors, regardless of whether the proceeding is based upon the minor's age or the minor's status as an incapacitated person; and
- (3) Consolidation of proceedings regarding same person. Where protective and guardianship proceedings relating to the same person have been initiated, they may be consolidated in the court as the court in the exercise of its discretion shall determine.

§560:5-107 Transfer of jurisdiction. (a) After the appointment of a guardian or conservator or entry of any other protective order, the court making the appointment or entering the order may transfer the proceeding to a court in another circuit in this State or to another state if the court is satisfied that a transfer will serve the best interest of the ward or protected person.

(b) If a guardianship or protective proceeding is pending in another state or a foreign country and a petition for guardianship or protective proceeding is filed in a court in this State, the court in this State shall notify the original court and, after

consultation with the original court, assume or decline jurisdiction, whichever is in the best interest of the ward or protected person.

(c) A guardian, conservator, or like fiduciary appointed in another state may petition the court for appointment as a guardian or conservator in this State if venue in this State is or will be established. The appointment may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court in this State. Notice of hearing on the petition, together with a copy of the petition, shall be given to the ward or protected person, if the ward or protected person has attained fourteen years of age, and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or conservator under this article were applicable. The court shall make the appointment in this State unless it concludes that the appointment would not be in the best interest of the ward or protected person. Upon the filing of an acceptance of office and any required bond, the court shall issue appropriate letters of guardianship or conservatorship. Within fourteen days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained fourteen years of age, and to all persons given notice of the hearing on the petition.

§560:5-108 Venue. (a) Venue for a guardianship proceeding for a minor is in the circuit of this State in which the minor resides or is present at the time the proceeding is commenced.

(b) Venue for a guardianship proceeding for an incapacitated person:

(1) Is in the circuit of this State in which the respondent resides; or

(2) If the respondent has been admitted to an institution by order of a court of competent jurisdiction, is in the circuit in which the court is located.

Venue for the appointment of an emergency or a temporary substitute guardian of an incapacitated person is also in the circuit in which the respondent is present.

(c) Venue for a protective proceeding is in the circuit of this State in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in this State, in any circuit of this State in which property of the respondent is located.

(d) If a proceeding under this article is brought in more than one circuit in this State, the court of the circuit in which the proceeding is first brought shall have the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

§560:5-109 Practice in court. (a) Except as otherwise provided in this article:

(1) Guardianship proceedings under this article pending in the family court are governed by the Hawaii family court rules including the rules concerning appellate review; and

(2) Guardianship and protective proceedings under this article pending in the court are governed by the Hawaii probate rules, including rules concerning appellate review.

(b) If guardianship and protective proceedings as to the same individual are commenced or pending in the same circuit, the proceedings may be consolidated.

§560:5-110 Letters of office. Upon the guardian's filing of an acceptance of office, the court shall issue appropriate letters of guardianship. Upon the conservator's filing of an acceptance of office and any required bond, the court shall issue appropriate letters of conservatorship. Letters of guardianship shall indicate whether

the guardian was appointed by the court, a parent, or the spouse or reciprocal beneficiary. Any limitation on the powers of a guardian or conservator or of the assets subject to a conservatorship shall be endorsed on the guardian's or conservator's letters.

§560:5-111 Effect of acceptance of appointment. By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship. The petitioner shall send or deliver notice of any proceeding to the guardian or conservator at the guardian's or conservator's address shown in the court records and at any other address then known to the petitioner.

§560:5-112 Termination of or change in guardian's or conservator's appointment. (a) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the applicable court. An appointment by a parent, spouse, or reciprocal beneficiary as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.

(b) A ward, protected person, person interested in the welfare of a ward or protected person, or governmental agency may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.

(c) The court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian or conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than thirty days after the occurrence of the vacancy or other designated event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.

(d) Notwithstanding section 560:1-401, the court, without a hearing, may remove or accept the resignation of a guardian and appoint the public guardian under chapter 551A as a temporary or successor guardian upon the filing of a petition with notice by regular mail to the last known address of those persons entitled to notice in section 560:5-309 and upon such instructions as the court deems necessary.

§560:5-113 Notice. (a) Except as otherwise ordered or waived by the court for good cause, if notice of a hearing on a petition is required, other than a notice for which specific requirements are otherwise provided, the petitioner shall give notice of the time and place of the hearing to the person to be notified. Notice shall be given in compliance with section 560:1-401, at least fourteen days before the hearing.

(b) Proof of notice shall be made before or at the hearing and filed in the proceeding.

§560:5-114 Waiver of notice. A person may waive notice, in writing, signed by the person or the person's attorney and filed in the proceeding. However, a respondent, ward, or protected person may not waive notice.

§560:5-115 Guardian ad litem. At any stage of a proceeding, the court or the family court may appoint a guardian ad litem if the court or the family court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The court or the family court shall state on the record the duties of the guardian ad litem and its reasons for the appointment. Persons appointed by the court or the family court, as applicable, to serve as guardians ad litem or to perform any other duties that may be requested by the court in guardianship and protective proceedings shall be compensated in the amounts, if any, that the court deems appropriate and reasonable. Any such compensation shall be paid from the respondent's assets or other source under the jurisdiction of the court or the family court as it shall order.

§560:5-116 Request for notice; interested persons. An interested person not otherwise entitled to notice who desires to be notified before any order is made in a guardianship proceeding, including a proceeding after the appointment of a guardian, or in a protective proceeding, may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall send or deliver a copy of the request to the guardian and to the conservator, if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or a lawyer to whom notice is to be given. The request is effective only as to proceedings conducted after its filing. A governmental agency paying or planning to pay benefits, or providing services, to the respondent or protected person is an interested person in a protective proceeding.

§560:5-117 Multiple appointments or nominations. If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls.

PART 2. GUARDIANSHIP OF MINOR

§560:5-201 Appointment and status of guardian. A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

§560:5-202 Parental appointment of guardian. (a) A guardian may be appointed by will or other signed writing by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment before confirmation by the court.

(b) Before the appointment becomes effective, the court may confirm the parent's selection of a guardian and terminate the rights of others to object upon:

- (1) Petition of an appointing parent;
- (2) A finding that the appointing parent will likely become unable to care for the child within two years; and
- (3) Notice as provided in section 560:5-205(a).

(c) Subject to section 560:5-203, the appointment of a guardian becomes effective upon:

- (1) The appointing parent's death;

- (2) An adjudication that the parent is an incapacitated person; or
- (3) A written determination by a physician who has examined the parent that the parent is no longer able to care for the child,

whichever first occurs.

(d) The guardian becomes eligible to act upon the filing of an acceptance of appointment. An acceptance of appointment shall be filed within thirty days after the guardian's appointment becomes effective. The guardian shall:

- (1) File the acceptance of appointment and a copy of the will with the court of the circuit in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the circuit in which the minor resides or is present; and
- (2) Give written notice of the acceptance of appointment to the appointing parent, if living, the minor, if the minor has attained fourteen years of age, and a person other than the parent having care and custody of the minor.

(e) Unless the appointment was previously confirmed by the court, the notice given under subsection (d)(2) shall include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 560:5-203.

(f) Unless the appointment was previously confirmed by the court, within thirty days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 560:5-205(a).

(g) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who died or was adjudged incapacitated has priority. An appointment by a parent which is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

(h) The powers of a guardian who timely complies with the requirements of subsections (d) and (f) relate back to give acts by the guardian, which are of benefit to the minor and occurred on or after the date the appointment became effective, the same effect as those that occurred after the filing of the acceptance of the appointment.

(i) The authority of a guardian appointed under this section terminates upon the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 560:5-203, whichever occurs first.

§560:5-203 Objection by minor or others to parental appointment. Until the court has confirmed an appointee under section 560:5-202, a minor who is the subject of an appointment by a parent and who has attained fourteen years of age, the other parent, or a person other than a parent or guardian having care or custody of the minor, may prevent or terminate the appointment at any time by filing a written objection in the court in which the appointing instrument is filed and giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn, and if withdrawn, is of no effect. The objection shall not preclude judicial appointment of the person selected by the parent. The court may treat the filing of an objection as a petition for the appointment of an emergency or a temporary guardian under section 560:5-204, and proceed accordingly.

§560:5-204 Judicial appointment of guardian; conditions for appointment. (a) A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.

(b) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:

- (1) The parents consent;
- (2) All parental rights have been terminated; or
- (3) The parents are unwilling or unable to exercise their parental rights.

(c) If a guardian is appointed by a parent pursuant to section 560:5-202 and the appointment has not been prevented or terminated under section 560:5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 560:5-202 has failed to accept the appointment within thirty days after notice of the guardianship proceeding.

(d) If necessary and on petition or motion and whether or not the conditions of subsection (b) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in section 560:5-113 shall be given to the parents and to a minor who has attained fourteen years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship shall not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under section 560:5-205.

(e) If the court finds that following the procedures of this part will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act under the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed thirty days and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian shall be given to:

- (1) The minor, if the minor has attained fourteen years of age;
- (2) Each living parent of the minor; and
- (3) A person having care or custody of the minor, if other than a parent.

The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment shall be given within forty-eight hours after the appointment and a hearing on the appropriateness of the appointment held within five days after the appointment.

§560:5-205 Judicial appointment of guardian; procedure. (a) After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:

- (1) The minor, if the minor has attained fourteen years of age and is not the petitioner;
- (2) Any person alleged to have had the primary care and custody of the minor during the sixty days before the filing of the petition;
- (3) Each living legal parent of the minor whose parental rights have not been terminated pursuant to chapter 571 or 587 or if one parent is deceased, the adult nearest in kinship to the deceased parent that can be found. If both parents are deceased, notice shall be given to each adult sibling of the minor who can be found or, if none, each adult nearest in kinship to each deceased parent that can be found. For good cause, the

court may waive notice to the nearest in kinship upon showing that all reasonable efforts have been made to ascertain the identity and address of the person or to effect notice, that the efforts were unsuccessful, and that further efforts should not be required because that person has not demonstrated a reasonable degree of interest in or concern about the minor;

- (4) Any person nominated as guardian by the minor if the minor has attained fourteen years of age;
- (5) Any appointee of a parent whose appointment has not been prevented or terminated under section 560:5-203; and
- (6) Any guardian or conservator currently acting for the minor in this State or elsewhere.

(b) The court, upon hearing, shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of section 560:5-204(b) have been met, and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

(c) If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained fourteen years of age.

§560:5-206 Judicial appointment of guardian; priority of minor's nominee; limited guardianship. (a) The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained fourteen years of age, unless the court finds the appointment will be contrary to the best interest of the minor.

(b) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor ward or other interested person, may limit the powers of a guardian otherwise granted by this part and thereby create a limited guardianship, except where a guardian was appointed subsequent to parental rights terminated under chapter 571 or 587. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

§560:5-207 Duties of guardian. (a) Except as otherwise limited by the court, a guardian of a minor ward has the duties and responsibilities of a parent regarding the ward's support, care, education, health, and welfare. A guardian shall act at all times in the ward's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

- (1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;
- (2) Take reasonable care of the ward's personal effects and bring a protective proceeding if necessary to protect other property of the ward;
- (3) Expend money of the ward that has been received by the guardian, for the ward's current needs for support, care, education, health, and welfare;
- (4) Conserve any excess money of the ward for the ward's future needs; provided that if a conservator has been appointed for the estate of the ward, the guardian shall pay the money at least quarterly to the conservator to be conserved for the ward's future needs;

- (5) Report the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control, as ordered by the court on application of any person interested in the ward's welfare or as required by court rule; and
- (6) Inform the court of any change in the ward's custodial dwelling or address.

§560:5-208 Powers of guardian. (a) Except as otherwise limited by the court, a guardian of a minor ward has the powers of a parent regarding the ward's support, care, education, health, and welfare.

(b) A guardian may:

- (1) Apply for and receive money for the support of the ward otherwise payable to the ward's parent, guardian, or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;
- (2) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling; provided that a guardian may only establish or move the ward's custodial dwelling outside the State upon express authorization of the court;
- (3) If a conservator for the estate of a ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;
- (4) Consent to medical or other care, treatment, or service for the ward;
- (5) Consent to the marriage of the ward; and
- (6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(c) The court may specifically authorize the guardian to consent to the adoption of the ward.

§560:5-209 Rights and immunities of guardian. (a) A guardian shall be entitled to such reasonable compensation from the ward's estate for services as guardian and to reimbursement for room, board, and clothing provided by the guardian to the ward, but only as is approved by the court.

(b) A guardian is not:

- (1) Legally obligated to use the guardian's personal funds for the ward's expenses;
- (2) Unless otherwise provided in the contract, individually liable on a contract properly entered into in the guardian's representative capacity in the exercise of the duties and powers as guardian unless the guardian fails to reveal the guardian's capacity and the identity of the ward in the contract;
- (3) Personally liable to a third person for acts of the ward solely by reason of the guardianship; and
- (4) Personally liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service to the ward except to the extent that a parent would be liable under the circumstances.

§560:5-210 Termination of guardianship; other proceedings after appointment. (a) A guardianship of a minor terminates upon the minor's death, adoption, emancipation or attainment of majority, or as ordered by the court.

(b) A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained fourteen years of age and is not the petitioner, the guardian, and any other person as ordered by the court.

PART 3. GUARDIANSHIP OF INCAPACITATED PERSON

§560:5-301 Appointment and status of guardian. A person becomes a guardian of an incapacitated person by an appointment by a parent, spouse, or reciprocal beneficiary or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

§560:5-302 Appointment of guardian by will or other writing. (a) A parent, by will or other signed writing, may appoint a guardian for an unmarried child who the parent believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.

(b) An individual, by will or other signed writing, may appoint a guardian for the individual's spouse or reciprocal beneficiary who the appointing spouse or reciprocal beneficiary believes is an incapacitated person, specify desired limitations on the powers to be given to the guardian, and revoke or amend the appointment before confirmation by the court.

(c) The incapacitated person, the person having care or custody of the incapacitated person, if other than the appointing parent, spouse, or reciprocal beneficiary, or the adult nearest in kinship to the incapacitated person, may file a written objection to an appointment, unless the court has confirmed the appointment under subsection (d). The filing of the written objection terminates the appointment. An objection may be withdrawn and, if withdrawn, is of no effect. The objection shall not preclude judicial appointment of the person selected by the parent, spouse, or reciprocal beneficiary. Notice of the objection shall be given to the guardian and any other person entitled to notice of the acceptance of the appointment. The court may treat the filing of an objection as a petition for the appointment of an emergency guardian under section 560:5-312 or for the appointment of a limited or unlimited guardian under section 560:5-304 and proceed accordingly.

(d) Before the appointment becomes effective, that court may confirm the appointing parent's, spouse's, or reciprocal beneficiary's selection of a guardian and terminate the rights of others to object upon:

- (1) Petition of the appointing parent, spouse, or reciprocal beneficiary;
- (2) A finding that the appointing parent, spouse, or reciprocal beneficiary will likely become unable to care for the incapacitated person within two years; and
- (3) Notice as provided in this section.

§560:5-303 Appointment of guardian by will or other writing; effectiveness; acceptance; confirmation. (a) The appointment of a guardian under section 560:5-302 becomes effective upon:

- (1) The death of the appointing parent, spouse, or reciprocal beneficiary;
- (2) The adjudication of incapacity of the appointing parent, spouse, or reciprocal beneficiary; or
- (3) A written determination by a physician who has examined the appointing parent, spouse, or reciprocal beneficiary that the appointing parent, spouse, or reciprocal beneficiary is no longer able to care for the incapacitated person,

whichever first occurs.

(b) Unless a person having priority under section 560:5-310 has filed an acceptance of appointment, a guardian appointed under section 560:5-302 becomes eligible to act upon the filing of an acceptance of appointment, which shall be filed within thirty days after the guardian's appointment becomes effective. The guardian shall:

- (1) File the notice of acceptance of appointment and a copy of the will with the court of the circuit in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court in the circuit in which the incapacitated person resides or is present; and
- (2) Give written notice of the acceptance of appointment to the appointing parent, spouse, or reciprocal beneficiary if living, the incapacitated person, a person having care or custody of the incapacitated person other than the appointing parent, spouse, or reciprocal beneficiary, and the adult nearest in kinship.

(c) Unless the appointment was previously confirmed by the court, the notice given under subsection (b)(2) shall include a statement of the right of those notified to terminate the appointment by filing a written objection as provided in section 560:5-302.

(d) An appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this State.

(e) Unless the appointment was previously confirmed by the court, within thirty days after filing the notice and the appointing instrument, a guardian appointed under section 560:5-302 shall file a petition in the court for confirmation of the appointment. The petition shall include the information required under section 560:5-304 and detail the special circumstances of the appointment by a parent, spouse, or reciprocal beneficiary. Notice of the filing shall be given in the manner provided in section 560:5-309.

(f) The authority of a guardian appointed under section 560:5-302 terminates upon the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 560:5-302, whichever first occurs.

(g) The appointment of a guardian under this section is not a determination of incapacity.

(h) The powers of a guardian who timely complies with the requirements of subsections (b) and (e) relate back to give acts by the guardian, which are of benefit to the incapacitated person and occurred on or after the date the appointment became effective, the same effect as those that occurred after the filing of the acceptance of appointment.

§560:5-304 Judicial appointment of guardian; petition. (a) An individual or a person interested in the individual's welfare may petition for a determination of incapacity, in whole or in part, and for the appointment of a limited or unlimited guardian for the individual.

(b)¹ The petition shall set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

- (1) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;
- (2) The name and address of the respondent's:

- (A) Spouse or reciprocal beneficiary, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
- (B) Adult children or, if the respondent has none, the respondent's parents and adult siblings, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;
- (3) The name and address of any person responsible for care or custody of the respondent;
- (4) The name and address of any legal representative of the respondent;
- (5) The name and address of any person nominated as guardian by the respondent;
- (6) The name and address of any agent appointed by the respondent under any medical directive or health care power of attorney, or, if none, any designated surrogate under section 327E-5(f);
- (7) The name and address of any proposed guardian and the reason why the proposed guardian should be selected;
- (8) The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent's alleged incapacity;
- (9) If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and
- (10) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

§560:5-305 Judicial appointment of guardian; preliminaries to hearing.

(a) Upon receipt of a petition to establish a guardianship, the applicable court shall set a date and time for hearing the petition and may appoint a kokua kanawai. The duties and reporting requirements of the kokua kanawai shall be limited to the relief requested in the petition. The kokua kanawai shall be an individual having the training or experience that the court deems appropriate.

(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:

- (1) Requested by the respondent;
- (2) Recommended by the kokua kanawai; or
- (3) The court determines that the respondent needs representation.

(c) The kokua kanawai shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (1) Explain to the respondent the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing, and the general powers and duties of a guardian;
- (2) Determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;
- (3) Inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and
- (4) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate.

(d) In addition to the duties imposed by subsection (c), the kokua kanawai shall:

- (1) Interview the petitioner and the proposed guardian;

- (2) Visit the respondent's present dwelling and any dwelling in which the respondent will live if the appointment is made;
 - (3) Obtain information from any physician or other person who is known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and
 - (4) Make any other investigation the court directs.
- (e) The kokua kanawai shall promptly file a report in writing with the court, which shall include:
- (1) A recommendation as to whether a lawyer should be appointed to represent the respondent;
 - (2) A summary of daily functions the respondent can manage without assistance, could manage with the assistance of supportive services or benefits, including use of appropriate technological assistance, and cannot manage;
 - (3) Recommendations regarding the appropriateness of guardianship, including as to whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;
 - (4) A statement of the qualifications of the proposed guardian, together with a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship;
 - (5) A statement as to whether the proposed dwelling meets the respondent's individual needs;
 - (6) A recommendation as to whether a professional evaluation or further evaluation is necessary; and
 - (7) Any other matters the court directs.

§560:5-306 Judicial appointment of guardian; professional evaluation.

At or before a hearing under this part, the court may order a professional evaluation of the respondent and shall order the evaluation if the respondent so demands. If the court orders the evaluation, the respondent shall be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the respondent's alleged impairment. The examiner shall promptly file a written report with the court. Unless otherwise directed by the court, the report shall contain:

- (1) A description of the nature, type, and extent of the respondent's specific cognitive and functional limitations;
- (2) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
- (3) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
- (4) The date of any assessment or examination upon which the report is based.

§560:5-307 Confidentiality of records. The written report of a kokua kanawai and any professional evaluation are confidential and shall be sealed upon filing, but are available to:

- (1) The court;
- (2) The respondent without limitation as to use;
- (3) The petitioner, the kokua kanawai, and the petitioner's and respondent's lawyers, for purposes of the proceeding; and
- (4) Other persons for any purposes that the court may order for good cause.

§560:5-308 Judicial appointment of guardian; presence and rights at hearing. (a) Unless excused by the court for good cause, the proposed guardian shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the kokua kanawai, and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

§560:5-309 Notice. (a) A copy of a petition for guardianship and notice of the hearing on the petition shall be served personally on the respondent. The notice shall include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection shall preclude the court from granting the petition.

(b) In a proceeding to establish a guardianship, notice of the hearing shall be given to the persons listed in the petition. For good cause, the court may waive notice to any person listed in the petition other than the respondent, upon a showing that all reasonable efforts have been made to ascertain the identity and address of the person or to effect notice, that the efforts were unsuccessful, and that further efforts should not be required because that person has not demonstrated a reasonable degree of interest in or concern about the respondent. Failure to give notice under this subsection shall not preclude the appointment of a guardian or the making of a protective order.

(c) Notice of the hearing on a petition for an order after appointment of a guardian, together with a copy of the petition, shall be given to the ward, the guardian, and any other person the court directs.

(d) A guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice shall be delivered or sent within fourteen days after the filing of the report.

§560:5-310 Who may be guardian; priorities. (a) Subject to subsection (c), the court in appointing a guardian shall consider persons otherwise qualified in the following order of priority:

- (1) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this State or elsewhere;
- (2) A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if at the time of the nomination the respondent had sufficient capacity to express a preference;
- (3) An agent appointed by the respondent under any medical directive or health care power of attorney or, if none, any designated surrogate under section 327E-5(f);
- (4) The spouse or reciprocal beneficiary of the respondent or a person nominated by will or other signed writing of a deceased spouse or reciprocal beneficiary;
- (5) An adult child of the respondent;

- (6) A parent of the respondent, or an individual nominated by will or other signed writing of a parent; and
- (7) An adult with whom the respondent has resided for more than six months before the filing of the petition.

(b) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the respondent, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(c) An owner, operator, or employee of a long-term care institution or other care settings at which the respondent is receiving care may not be appointed as guardian unless related to the respondent by blood, marriage, or adoption, or otherwise ordered by the court.

§560:5-311 Findings; order of appointment. (a) The court may:

- (1) Appoint a limited or unlimited guardian for a respondent only if it finds by clear and convincing evidence that:
 - (A) The respondent is an incapacitated person; and
 - (B) The respondent's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance; or
- (2) With appropriate findings, treat the petition as one for a protective order under section 560:5-401, enter any other appropriate order, or dismiss the proceeding.

(b) The court, whenever feasible, shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence.

(c) Within fourteen days after an appointment, a guardian shall send or deliver to the ward and to all other persons given notice of the hearing on the petition a copy of the order of appointment, together with a notice of the right to request termination or modification.

§560:5-312 Emergency guardian. (a) If the court finds that compliance with the procedures of this part will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed ninety days and who may exercise only the powers specified in the order. Immediately upon appointment of an emergency guardian, the court may appoint a lawyer to represent the respondent throughout the emergency guardianship. Except as otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the petition shall be given to the respondent and any other persons as the court directs.

(b) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from affidavit or testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the respondent, the respondent shall be given notice of the appointment within forty-eight hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within ten days after the appointment unless extended by order of the court.

(c) Appointment of an emergency guardian, with or without notice, shall not be deemed a determination of the respondent's incapacity.

(d) The court may remove an emergency guardian or modify the powers granted at any time. An emergency guardian shall make any report the court requires. In other respects, the provisions of this article concerning guardians apply to an emergency guardian.

§560:5-313 Temporary substitute guardian. (a) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward or the affected guardian and other interested persons, then the temporary substitute guardian, within five days after the appointment, shall inform them of the appointment.

(b) The court may remove a temporary substitute guardian or modify the powers granted at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of this article concerning guardians apply to a temporary substitute guardian.

§560:5-314 Duties of guardian. (a) Except as otherwise limited by the court, a guardian shall make decisions regarding the ward's support, care, education, health, and welfare. A guardian shall exercise authority only as necessitated by the ward's limitations and, to the extent possible, shall encourage the ward to participate in decisions, act on the ward's own behalf, and develop or regain the capacity to manage the ward's personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian at all times shall act in the ward's best interest and exercise reasonable care, diligence, and prudence.

(b) A guardian shall:

- (1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;
- (2) Take reasonable care of the ward's personal effects and bring protective proceedings if necessary to protect the property of the ward;
- (3) Expend money of the ward that has been received by the guardian, for the ward's current needs for support, care, education, health, and welfare;
- (4) Conserve any excess money of the ward for the ward's future needs; provided that if a conservator has been appointed for the estate of the ward, the guardian shall pay the money to the conservator, at least quarterly, to be conserved for the ward's future needs;
- (5) Immediately notify the court if the ward's condition has changed so that the ward is capable of exercising rights previously removed; and
- (6) Inform the court of any change in the ward's custodial dwelling or address.

§560:5-315 Powers of guardian. (a) Except as otherwise limited by the court, a guardian may:

- (1) Apply for and receive money payable to the ward or the ward's guardian or custodian for the support of the ward under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;

- (2) If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling; provided that a guardian may only establish or move the ward's place of dwelling outside this State upon express authorization of the court;
 - (3) If a conservator for the estate of the ward has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the ward or to pay money for the benefit of the ward;
 - (4) Consent to medical or other care, treatment, or service for the ward;
 - (5) Consent to the marriage or divorce of the ward; and
 - (6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well being.
- (b) The court may specifically authorize the guardian to consent to the adoption of the ward.

§560:5-316 Rights and immunities of guardian; limitations. (a) A guardian shall be entitled to such reasonable compensation from the ward's estate for services as guardian and to reimbursement for room, board, and clothing provided to the ward, as is approved by order of the court.

(b) A guardian is not:

- (1) Legally obligated to use the guardian's personal funds for the ward's expenses;
- (2) Unless otherwise provided in the contract, individually liable on a contract properly entered into in the guardian's representative capacity in the exercise of the duties and powers as guardian unless the guardian fails to reveal the guardian's capacity and the identity of the ward in the contract;
- (3) Personally liable to a third person for acts of the ward solely by reason of the relationship; and
- (4) Liable for injury to the ward resulting from the wrongful conduct of a third party that provides medical or other care, treatment, or service to the ward, if the guardian exercised reasonable care in choosing the third party.

(c) A guardian, without authorization of the court, may not revoke any health care directions set forth in any medical directive or health care power of attorney of which the ward is the principal. However, the appointment of a guardian automatically terminates the authority of any agent designated in the medical directive or health care power of attorney.

(d) A guardian shall not initiate the commitment of a ward to a mental health-care institution except in accordance with the State's procedure for involuntary civil commitment.

§560:5-317 Reports; monitoring of guardianship. (a) Within thirty days after appointment, a guardian shall report to the court in writing on the condition of the ward and account for money and other assets in the guardian's possession or subject to the guardian's control. A guardian shall report at least annually thereafter and whenever ordered by the court. The report shall state or contain:

- (1) The current mental, physical, and social condition of the ward;
- (2) The living arrangements for all addresses of the ward during the reporting period;
- (3) The medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care;

- (4) A summary of the guardian's visits with the ward and activities on the ward's behalf and the extent to which the ward has participated in decision-making;
 - (5) If the ward is institutionalized, whether the guardian considers the current plan for care, treatment, or habilitation to be in the ward's best interest;
 - (6) Plans for future care; and
 - (7) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.
- (b) The court may appoint a kokua kanawai to review a report, interview the ward or guardian, and make any other investigation the court directs.
- (c) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

§560:5-318 Termination or modification of guardianship. (a) A guardianship terminates upon the death of the ward or upon order of the court.

(b) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

(c) Except as otherwise ordered by the court for good cause, the court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward that apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the court shall order the termination unless it is proven by clear and convincing evidence that continuation of the guardianship is in the best interest of the ward.

PART 4. PROTECTION OF PROPERTY OF PROTECTED PERSON

§560:5-401 Protective proceeding. Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this part in relation to the estate and affairs of:

- (1) A minor, if the court determines that:
 - (A) The minor owns money or property requiring management or protection that cannot otherwise be provided;
 - (B) The minor has, or may have, business affairs that may be put at risk or prevented because of the minor's age; or
 - (C) Money is needed for support and education and that protection is necessary or desirable to obtain or provide money; or
- (2) Any individual, including a minor, if the court determines that, for reasons other than age:
 - (A) By clear and convincing evidence, the individual is unable to manage property and business affairs because of an impairment in the ability to receive and evaluate information or to make or communicate decisions, even with the use of appropriate and reasonably available technological assistance, or because the individual is missing, detained, or unable to return to the United States; and
 - (B) By a preponderance of evidence, the individual has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, education, health, and

welfare of the individual or of individuals who are entitled to the individual's support and that protection is necessary or desirable to obtain or provide money.

§560:5-402 Jurisdiction over business affairs of protected person. After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:

- (1) Exclusive jurisdiction to determine the need for a conservatorship or other protective order;
- (2) Exclusive jurisdiction to determine how the estate of the protected person, that is subject to the laws of this State, shall be managed, expended, or distributed to or for the use of the protected person, individuals who are in fact dependent upon the protected person, or other claimants; and
- (3) Concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning assets of the estate.

§560:5-403 Original petition for appointment or protective order. (a) The following persons may petition for the appointment of a conservator or for any other appropriate protective order:

- (1) The person to be protected;
- (2) An individual interested in the estate, affairs, or welfare of the person to be protected, including a parent, guardian, or custodian; or
- (3) A person who would be adversely affected by lack of effective management of the property and business affairs of the person to be protected.

(b) The petition under subsection (a) shall set forth the petitioner's name, residence, current address if different, relationship to the respondent, and interest in the appointment or other protective order, and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

- (1) The respondent's name, age, principal residence, current street address, and, if different, the address of the dwelling where it is proposed that the respondent will reside if the appointment is made;
- (2) If the petition alleges impairment in the respondent's ability to receive and evaluate information, a brief description of the nature and extent of the respondent's alleged impairment;
- (3) If the petition alleges that the respondent is missing, detained, or unable to return to the United States, a statement of the relevant circumstances, including the time and nature of the disappearance or detention and a description of any search or inquiry concerning the respondent's whereabouts;
- (4) The name and address of the respondent's:
 - (A) Spouse or reciprocal beneficiary or, if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
 - (B) Adult children or, if the respondent has none, the respondent's parents and adult siblings or, if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found with reasonable efforts;
- (5) The name and address of the person responsible for care or custody of the respondent;
- (6) The name and address of any legal representative of the respondent;

- (7) A general statement of the respondent's property with an estimate of its value, including any insurance or pension, and the source and amount of other anticipated income or receipts;
 - (8) The reason why a conservatorship or other protective order is in the best interest of the respondent; and
 - (9) A proposed itemized budget of income and expenditures.
- (c) If a conservatorship is requested, the petition shall also set forth to the extent known:
- (1) The name and address of any proposed conservator and the reason why the proposed conservator should be selected;
 - (2) The name and address of any person nominated as conservator by the respondent if the respondent has attained fourteen years of age; and
 - (3) The type of conservatorship requested and, if an unlimited conservatorship, the reason why limited conservatorship is inappropriate or, if a limited conservatorship, the property to be placed under the conservator's control and any limitation on the conservator's powers and duties.

§560:5-404 Notice. (a) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order shall be served personally on the respondent if the respondent has attained fourteen years of age, but if the respondent's whereabouts is unknown or personal service cannot be made, service on the respondent shall be made by certified or registered mail or by publication pursuant to section 560:1-401(a)(3). The notice shall include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this subsection precludes the court from granting the petition.

(b) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing shall be given to the persons listed in the petition. Failure to give notice under this subsection does not preclude the appointment of a conservator or the making of another protective order.

(c) Notice of the hearing on a petition for an order after appointment of a conservator or making of another protective order, together with a copy of the petition, shall be given to the protected person, if the protected person has attained fourteen years of age and is not missing, detained, or unable to return to the United States, any conservator of the protected person's estate, and any other person as ordered by the court.

(d) A conservator shall give notice of the filing of the conservator's inventory or report, together with a copy of the inventory or report to the protected person and any other person the court directs. The notice shall be delivered or sent within fourteen days after the filing of the inventory or report.

§560:5-405 Original petition; minors; preliminaries to hearing. (a) Upon the filing of a petition to establish a conservatorship or for another protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained fourteen years of age.

(b) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may make orders to preserve and apply the property of the minor as may be required

for the support of the minor or individuals who are in fact dependent upon the minor. The court may appoint a special conservator to assist in that task.

§560:5-406 Original petition; preliminaries to hearing. (a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing. The court may appoint a kokua kanawai. The duties and reporting requirements of the kokua kanawai shall be limited to the relief requested in the petition. The kokua kanawai shall be an individual having such training or experience that the court deems appropriate.

(b) The court shall appoint a lawyer to represent the respondent in the proceeding if:

- (1) Requested by the respondent;
- (2) Recommended by the kokua kanawai; or
- (3) The court determines that the respondent needs representation.

(c) The kokua kanawai shall interview the respondent in person and, to the extent that the respondent is able to understand:

- (1) Explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;
- (2) If the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;
- (3) Inform the respondent of the respondent's rights, including the right to employ or request that the court appoint a lawyer to consult with a lawyer at the respondent's own expense; and
- (4) Inform the respondent that all costs and expenses of the proceeding, including respondent's attorney's fees, will be paid from the respondent's estate unless the court otherwise directs.

(d) In addition to the duties imposed by subsection (c), the kokua kanawai shall:

- (1) Interview the petitioner and the proposed conservator, if any; and
- (2) Make any other investigation the court directs.

(e) The kokua kanawai shall promptly file a report with the court, which shall include:

- (1) A recommendation as to whether a lawyer should be appointed to represent the respondent;
- (2) Recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;
- (3) A statement of the qualifications of the proposed conservator, together with a statement as to whether the respondent approves or disapproves of the proposed conservator, and a statement of the powers and duties proposed or the scope of the conservatorship;
- (4) A recommendation as to whether a professional evaluation or further evaluation is necessary; and
- (5) Any other matters the court directs.

(f) The court may also appoint a physician, psychologist, or other individual qualified to evaluate the alleged impairment to conduct an examination of the respondent.

(g) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may issue orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent. The court may appoint a special conservator to assist in that task.

§560:5-407 Confidentiality of records. The written report of a kokua kanawai and any professional evaluation are confidential and shall be sealed upon filing, but shall be available to:

- (1) The court;
- (2) The respondent without limitation as to use;
- (3) The petitioner, the kokua kanawai, and the petitioner's and respondent's lawyers, for purposes of the proceeding; and
- (4) Other persons for any purposes that the court may order for good cause.

§560:5-408 Original petition; procedure at hearing. (a) Unless excused by the court for good cause, a proposed conservator shall attend the hearing. The respondent shall attend the hearing, unless excused by the court for good cause. The respondent may present evidence and subpoena witnesses and documents, examine witnesses, including any court-appointed physician, psychologist, or other individual qualified to evaluate the alleged impairment, and the kokua kanawai, and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

§560:5-409 Original petition; orders. (a) If a proceeding is brought for the reason that the respondent is a minor, after a hearing on the petition, upon finding that the appointment of a conservator or other protective order is in the best interest of the minor, the court shall make an appointment or other appropriate protective order.

(b) If a proceeding is brought for reasons other than that the respondent is a minor, after a hearing on the petition, upon finding that a basis exists for a conservatorship or other protective order, the court shall make the least restrictive order consistent with its findings. The court shall make orders necessitated by the protected person's limitations and demonstrated needs, including appointive and other orders that will encourage the development of maximum self-reliance and independence of the protected person.

(c) Within fourteen days after entry of the order of appointment, the conservator shall deliver or send a copy of the order of appointment, together with a statement of the right to seek termination or modification, to the protected person, if the protected person has attained fourteen years of age and is not missing, detained, or unable to return to the United States, and to all other persons given notice of the petition.

(d) The appointment of a conservator or the entry of another protective order shall not be deemed a determination of incapacity of the protected person under article 3.

§560:5-410 Powers of court. (a) After hearing and upon determining that a basis for a conservatorship or other protective order exists, the court shall have the following powers which may be exercised directly or through a conservator:

- (1) With respect to a minor for reasons of age, all the powers over the estate and business affairs of the minor which may be necessary for the best interest of the minor and members of the minor's immediate family; and
- (2) With respect to an adult, or to a minor for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person that the person could exercise if the person were an adult, present, and not under conservatorship or other protective order.

(b) Subject to section 560:5-110 requiring endorsement of limitations on the letters of office, the court may limit at any time the powers of a conservator otherwise conferred and may remove or modify any limitation.

§560:5-411 Required court approval. (a) After notice to interested persons and upon express authorization of the court, a conservator may:

- (1) Make gifts, except as otherwise provided in section 560:5-427(b);
- (2) Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;
- (3) Exercise or release a power of appointment;
- (4) Create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;
- (5) Exercise rights to elect options and change beneficiaries under retirement plans, insurance policies and annuities, or surrender the policies and annuities for their cash value;
- (6) Exercise any right to an elective share in the estate of the protected person's deceased spouse or reciprocal beneficiary and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and
- (7) Make, amend, or revoke the protected person's will.

(b) A conservator, in making, amending, or revoking the protected person's will, shall comply with state laws for executing wills.

(c) The court, in exercising or in approving a conservator's exercise of the powers listed in subsection (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider:

- (1) The financial needs of the protected person and the needs of individuals who are in fact dependent on the protected person for support and the interest of creditors;
- (2) Possible reduction of income, estate, inheritance, or other tax liabilities;
- (3) Eligibility for governmental assistance;
- (4) The protected person's previous pattern of giving or level of support;
- (5) The existing estate plan;
- (6) The protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death; and
- (7) Any other factors the court considers relevant.

§560:5-412 Protective arrangements and single transactions. (a) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:

- (1) Authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:
 - (A) Payment, delivery, deposit, or retention of funds or property;
 - (B) Sale, mortgage, lease, or other transfer of property;
 - (C) Purchase of an annuity;
 - (D) Making a contract for life care, deposit contract, or contract for training and education; or
 - (E) Addition to or establishment of a suitable trust, including a trust created under chapter 554B; and
- (2) Authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.

(b) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in section 560:5-411(c).

(c) The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The special conservator shall have the authority conferred by the order and shall serve until discharged by order after reporting to the court.

§560:5-413 Who may be conservator; priorities. (a) Except as otherwise provided in subsection (d), the court, in appointing a conservator, shall consider persons otherwise qualified in the following order of priority:

- (1) A conservator, guardian of the estate, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides;
- (2) A person nominated as conservator by the respondent, including the respondent's most recent nomination made in a durable power of attorney, if the respondent has attained fourteen years of age and at the time of the nomination had sufficient capacity to express a preference;
- (3) An agent appointed by the respondent to manage the respondent's property under a durable power of attorney;
- (4) The spouse or reciprocal beneficiary of the respondent;
- (5) An adult child of the respondent;
- (6) A parent of the respondent; and
- (7) An adult with whom the respondent has resided for more than six months before the filing of the petition.

(b) A person having priority under subsection (a)(1), (4), (5), or (6) may designate in writing a substitute to serve instead and thereby transfer the priority to the substitute.

(c) With respect to persons having equal priority, the court shall select the one it considers best qualified. The court, acting in the best interest of the protected person, may decline to appoint a person having priority and appoint a person having a lower priority or no priority.

(d) An owner, operator, or employee of a long-term care institution at which the respondent is receiving care shall not be appointed as conservator unless related to the respondent by blood, marriage, adoption, or otherwise ordered by the court.

§560:5-414 Petition for order subsequent to appointment. (a) A protected person or a person interested in the welfare of a protected person may file a petition in the appointing court for an order:

- (1) Requiring bond or collateral or additional bond or collateral, or reducing bond or collateral;
 - (2) Requiring an accounting for the administration of the protected person's estate;
 - (3) Directing distribution;
 - (4) Removing the conservator and appointing a temporary or successor conservator;
 - (5) Modifying the type of appointment or powers granted to the conservator if the extent of protection or management previously granted is currently excessive or insufficient or the protected person's ability to manage the estate and business affairs has so changed as to warrant the action; or
 - (6) Granting other appropriate relief.
- (b) A conservator may petition the appointing court for instructions concerning fiduciary responsibility.
- (c) Upon notice and hearing the petition, the court may give appropriate instructions and make any appropriate order.

§560:5-415 Bond. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify. Unless otherwise directed by the court, the cost of the bond shall be charged to the protected person's estate and the bond shall be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus one year's estimated income, and minus the value of assets deposited under arrangements requiring an order of the court for their removal and the value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without court authorization. The court, in place of sureties on a bond, may accept collateral for the performance of the bond, including a pledge of securities or a mortgage of real property.

§560:5-416 Terms and requirements of bond. (a) The following rules apply to any bond required:

- (1) Sureties and the conservator are jointly and severally liable;
 - (2) By executing the bond of a conservator, a surety submits to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator in which the surety is named as a party. Notice of any proceeding shall be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner;
 - (3) On petition of a successor conservator or any interested person, a proceeding may be brought against a surety for breach of the obligation of the bond of the conservator; and
 - (4) The bond of the conservator may be proceeded against until liability under the bond is exhausted.
- (b) A proceeding may not be brought against a surety on any matter as to which an action or proceeding against the primary obligor is barred.

§560:5-417 Compensation and expenses. If not otherwise compensated for services rendered, a guardian, conservator, physician, lawyer for the respondent, lawyer whose services resulted in a protective order or in an order beneficial to a protected person's estate, or any person appointed by the court is entitled to reasonable compensation from the estate, even if no guardian or conservator is appointed. Compensation may be paid and expenses reimbursed without court order.

If the court or the family court determines that the compensation is excessive or the expenses are inappropriate, the excessive or inappropriate amount shall be repaid to the estate.

§560:5-418 General duties of conservator. (a) A conservator, in relation to powers conferred by this article or implicit in the title acquired by virtue of the proceeding, shall be a fiduciary and shall observe the standards of care applicable to a trustee.

(b) A conservator may exercise authority only as necessitated by the limitations of the protected person, and to the extent possible, shall encourage the person to participate in decisions, act in the person's own behalf, and develop or regain the ability to manage the person's estate and business affairs.

(c) In investing an estate, selecting assets of the estate for distribution, and invoking powers of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator, a conservator shall take into account any estate plan of the person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the person.

§560:5-419 Inventory; records. (a) Within sixty days after entry of the order of appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(b) A conservator shall keep records of the administration of the estate and make them available for examination and copying on reasonable request of an interested person.

§560:5-420 Reports; appointment of kokua kanawai. (a) A conservator shall file a petition for approval of accounts and report to the court for administration of the estate annually unless the court otherwise directs, upon resignation or removal, upon termination of the conservatorship, and at other times as the court directs. An order allowing an intermediate report of a conservator adjudicates liabilities concerning the matters adequately disclosed in the accounting. An order allowing a final report adjudicates all previously unsettled liabilities relating to the conservatorship, and, subject to appeal and subject to vacation, is final as to all persons with respect to all issues concerning the estate that the court considered or might have considered.

(b) A report shall include:

- (1) A list of the assets of the estate under the conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made;
- (2) A list of the services provided to the protected person; and
- (3) Any recommended changes in the budget for the conservatorship as well as a recommendation as to the continued need for conservatorship and any recommended changes in the scope of the conservatorship.

(c) The court may appoint a kokua kanawai to review a report or budget, interview the protected person or conservator, and make any other investigation the court directs. In connection with a report, the court may order a conservator to submit the assets of the estate to an appropriate examination to be made in a manner the court directs.

§560:5-421 Title by appointment. (a) The appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to

the part thereof specified in the order, held at the time of appointment or thereafter acquired, including title to any property held for the protected person by custodians or attorneys-in-fact. An order vesting title in the conservator to only a part of the property of the protected person creates a conservatorship limited to assets specified in the order.

(b) Letters of conservatorship are evidence of vesting title of the protected person's assets in the conservator. An order terminating a conservatorship transfers title to assets remaining subject to the conservatorship, including any described in the order, to the formerly protected person or the person's successors.

(c) Subject to the requirements of other laws governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give notice of title as between the conservator and the protected person.

(d) Except as limited in the appointing order, a conservator has the authority to continue, modify, or revoke any financial power of attorney previously created by the protected person.

(e) Upon notice of the appointment of a conservator, all agents acting under a previously created power of attorney by the protected person shall:

- (1) Take no further actions without the direct written authorization of the conservator;
- (2) Promptly report to the conservator as to any action taken under the power of attorney; and
- (3) Promptly account to the conservator for all actions taken under the power of attorney.

(f) Nothing in this section shall be construed to affect previously created medical decision-making authority. Any agent violating this section shall be liable to the protected person's estate for all costs incurred in attempting to obtain compliance, including, but not limited to reasonable conservator and attorney fees and costs.

§560:5-422 Protected person's interest inalienable. (a) Except as otherwise provided in subsections (c) and (d), the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which, subject to presentation and allowance, may be satisfied as provided in section 560:5-429.

(b) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed under section 560:5-429.

(c) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession, is protected as if the protected person or transferee had valid title.

(d) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.

§560:5-423 Sale, encumbrance, or other transaction involving conflict of interest. Any transaction involving the conservatorship estate that is affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involv-

ing the conservatorship estate entered into by the conservator, the spouse or reciprocal beneficiary, descendant, agent, or lawyer of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

§560:5-424 Protection of person dealing with conservator. (a) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order under section 560:5-410 or 560:5-411 is protected as though the conservator properly exercised the power. That a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of the exercise, but restrictions on powers of conservators that are endorsed on letters as provided in section 560:5-110 are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.

(b) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

§560:5-425 Powers of conservator in administration. (a) Except as otherwise qualified or limited by the court in its order of appointment and endorsed on the letters, a conservator has all of the powers granted in this section and any additional powers granted by law to a trustee in this State.

(b) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without further court authorization or confirmation, may:

- (1) Collect, hold, and retain assets of the estate, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;
- (2) Receive additions to the estate;
- (3) Continue or participate in the operation of any business or other enterprise;
- (4) Acquire an undivided interest in an asset of the estate in which the conservator, in any fiduciary capacity, holds an undivided interest;
- (5) Invest assets of the estate as though the conservator were a trustee;
- (6) Deposit money of the estate in a financial institution, including one operated by the conservator;
- (7) Acquire or dispose of an asset of the estate, including real property in another state, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate; provided that any sale of real property in the State shall be subject to confirmation pursuant to section 531-29;
- (8) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- (9) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration;
- (10) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

- (11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (12) Grant an option involving disposition of an asset of the estate and take an option for the acquisition of any asset;
- (13) Vote a security, in person or by general or limited proxy;
- (14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (15) Sell or exercise stock subscription or conversion rights;
- (16) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (17) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery;
- (18) Insure the assets of the estate against damage or loss and the conservator against liability with respect to a third person;
- (19) Borrow money, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;
- (20) Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;
- (21) Pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (22) Allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;
- (23) Pay any sum distributable to a protected person or individual who is in fact dependent on the protected person by paying the sum to the distributee or by paying the sum for the use of the distributee:
 - (A) To the guardian of the distributee;
 - (B) To a distributee's custodian under chapter 553A or custodial trustee under chapter 554B; or
 - (C) If there is no guardian, custodian, or custodial trustee, to a relative or other person having physical custody of the distributee;
- (24) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of assets of the estate and of the conservator in the performance of fiduciary duties; and
- (25) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

(c) In investing the estate, and in selecting assets of the estate for distribution under section 560:5-427, in utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, and in exercising any other power vested in them, the conservator and the court shall take into account any known estate plan of the protected person, including the protected person's will, any revocable trust of which the protected

person is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the protected person's death to another or others which the protected person may have originated. The conservator may examine the will of the protected person.

§560:5-426 Delegation. (a) A conservator shall not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.

(b) The conservator shall exercise reasonable care, skill, and caution in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;
- (3) Periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and
- (4) Redressing an action or decision of an agent that would constitute a breach of trust if performed by the conservator.

(c) A conservator who complies with subsections (a) and (b) is not liable to the protected person or to the estate or to the protected person's successors for the decisions or actions of the agent to whom a function was delegated.

(d) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

(e) By accepting a delegation from a conservator subject to the laws of this State, an agent submits to the jurisdiction of the courts of this State.

§560:5-427 Principles of distribution by conservator. (a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with the following rules:

- (1) A conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent;
- (2) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to a protected person, or an individual who is in fact dependent on the protected person, in accordance with the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person;
- (3) In making distributions under this subsection, the conservator shall consider:
 - (A) The size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage the protected person's own business affairs and the estate;

- (B) The accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and
- (C) Other money or sources used for the support of the protected person; and
- (4) Money expended under this subsection may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator may have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.
- (b) If an estate is ample to provide for the distributions authorized by subsection (a), a conservator for a protected person other than a minor may make gifts that the protected person may have been expected to make, in amounts that do not exceed, in the aggregate, for any calendar year twenty per cent of the income of the estate in that year.

§560:5-428 Death of protected person. If a protected person dies, the conservator, with reasonable promptness shall deliver any will of the protected person that may have come into the conservator's possession to a person able to secure its probate or, if none is known, deposit the will with an appropriate court. The conservator shall inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another person entitled to it. A person who knowingly and wilfully fails to so deliver or deposit a will is liable to any person aggrieved for any damages that may be sustained by the failure, and the court may award treble damages. A person who wilfully refuses to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court. Proceedings under this section shall be brought in the probate proceeding relating to the will.

§560:5-429 Presentation and allowance of claims. (a) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in subsection (d). A claimant may present a claim by:

- (1) Sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or
- (2) Filing a written statement of the claim, in a form acceptable to the court, with the clerk of court and sending or delivering a copy of the statement to the conservator.

(b) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever first occurs. A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within sixty days after its presentation. The conservator, before payment, may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until thirty days after its disallowance.

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding is pending against a protected

person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

(d) If it appears that the estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

- (1) Costs and expenses of administration;
- (2) Claims of the federal or state government having priority under other law;
- (3) Claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals who are in fact dependent on the protected person;
- (4) Claims arising before the conservatorship; and
- (5) All other claims.

(e) Preference shall not be given in the payment of a claim over any other claim of the same class, and a claim due and payable shall not be preferred over a claim not due.

(f) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security interest in the conservatorship estate for the payment of any or all claims at a future date.

(g) Nothing in this section affects or prevents:

- (1) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or
- (2) To the limits of the insurance protection only, any proceeding to establish liability of the protected person for which the protected person is protected by liability insurance.

§560:5-430 Personal liability of conservator. (a) Unless otherwise provided in the contract, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.

(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault.

(c) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(d) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or in another appropriate proceeding or action.

(e) A conservator is not personally liable for any environmental condition on or injury resulting from any environmental condition on land solely by reason of an acquisition of title under section 560:5-421.

§560:5-431 Termination of proceedings. (a) A conservatorship terminates upon the death of the protected person or upon order of the court. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains majority or is emancipated.

(b) Within sixty days of the death of the protected person, the attainment of majority by a minor, or upon order of the court, the conservator shall file a final report and petition for discharge.

(c) On petition of a protected person, a conservator, or another person interested in a protected person's welfare, the court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator. Termination of the conservatorship does not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.

(d) Except as otherwise ordered by the court for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. Upon the establishment of a prima facie case for termination, the court shall order termination unless it is proved that continuation of the conservatorship is in the best interest of the protected person.

(e) Upon termination of a conservatorship and whether or not formally distributed by the conservator, title to assets of the estate passes to the formerly protected person or the person's successors. The order of termination shall provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer of title or confirm a distribution previously made and to file a final report and a petition for discharge upon approval of the final report.

(f) The court shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge.

§560:5-432 Payment of debt and delivery of property to foreign conservator without local proceeding. (a) A person who is indebted to, or has the possession of tangible or intangible property of a protected person, may pay the debt or deliver the property to a foreign conservator, guardian of the estate, or other court-appointed fiduciary of the state of residence of the protected person. Payment or delivery shall be made only upon proof of appointment and presentation of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding relating to the protected person is not pending in this State and the foreign fiduciary is entitled to payment or to receive delivery.

(b) Payment or delivery in accordance with subsection (a) discharges the debtor or possessor, absent knowledge of any protective proceeding pending in this State.

§560:5-433 Foreign conservator; proof of authority; bond; powers. If a conservator has not been appointed in this State and a petition in a protective proceeding is not pending in this State, a conservator appointed in the state in which the protected person resides may file in a court of this State, in a circuit in which property belonging to the protected person is located, authenticated copies of letters of appointment and of any bond. Thereafter, the conservator may exercise all powers of a conservator appointed in this State as to property in this State and may maintain actions and proceedings in this State subject to any conditions otherwise imposed upon nonresident parties."

SECTION 2. Section 128-23, Hawaii Revised Statutes, is amended to read as follows:

"§128-23 Determination of compensation. Whenever the governor requisitions and takes over any property or the temporary use thereof, the owner, or other

person entitled thereto, shall be paid as compensation for the property or use, such sum as the governor determines to be fair and just, within twenty days after it has been requisitioned and taken; provided that the compensation for temporary use may be paid in monthly or lesser installments. If any person is unwilling to accept, as full and complete compensation for the property or use, the sum determined by the governor, the person shall be paid seventy-five per cent of the sum determined by the governor, and shall be entitled to sue the State for such additional sum as, when added to the sum already received by the person, the person may consider fair and just compensation for such property or use, in the manner provided by chapter 661; provided that the suit is instituted within two years after the requisition in the case of the taking of real property in fee simple, or within one year after the requisition in all other cases, subject, to sections 657-13 to 657-15 which are hereby made applicable to such a suit; except that no more than six months shall be allowed for the bringing of a suit after the appointment of a ~~[guardian of the property]~~ conservator of the person under disability, or the removal of the disability, or after the appointment of personal representatives; provided further that recovery shall be confined to the fair market value of the property or its fair rental value, as the case may be, without any allowance for prospective profits, punitive or other damages. Whenever the owner of property, or other person entitled to compensation on account of the requisitioning of property or the use thereof, is under a disability, or has died, and no ~~[guardian,]~~ conservator or personal representative has been appointed, the State acting through the attorney general, may apply for the appointment of a ~~[guardian of the property of the person,]~~ conservator, or for the appointment of a personal representative."

SECTION 3. Section 327E-2, Hawaii Revised Statutes, is amended by amending the definition of "guardian" to read as follows:

"“Guardian” means a judicially appointed guardian ~~[or conservator]~~ having authority to make a health-care decision for an individual.”

SECTION 4. Section 327E-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Absent a court order to the contrary, a health-care decision ~~[of an agent takes precedence over that]~~ of a guardian~~[-]~~ appointed pursuant to chapter 560 takes precedence over that of an agent."

SECTION 5. Section 333F-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any law to the contrary, the family court may appoint the director as guardian of any person if the court finds that:

- (1) The person is an incapacitated person as defined in section ~~[560:5-101(2);]~~ 560:5-102;
- (2) The person is developmentally disabled or mentally retarded;
- (3) The person may reasonably be expected to need treatment or care at ~~[Waimano training school and hospital or]~~ any residential facility; and
- (4) There is no other suitable guardian including the public guardian as designated in chapter 551A able or willing to serve as guardian ~~[of the person].~~"

SECTION 6. Section 333F-13, Hawaii Revised Statutes, is amended to read as follows:

"§333F-13 **Payments for care and treatment of persons receiving services; liability.** A parent, ~~[guardian of the property,]~~ conservator, or other person liable for the support of any person receiving services under this chapter shall be

required to pay for the care and treatment of the person. The parent or ~~[guardian of the property]~~ conservator of a minor receiving services under this chapter shall be liable for the care and treatment until the person has reached the age of majority. The liability of a ~~[guardian of the property]~~ conservator of a person under this section shall be limited to the estate of the ward and shall not be recoverable out of the individual assets of the ~~[guardian.]~~ conservator. Every person receiving services under this chapter and any property of the person's estate not exempt from execution shall be liable for the expense of the person's care and treatment. The attorney general, whenever requested by the director, shall take any steps that may be appropriate, by civil action if necessary, to enforce any liability established by this section. The attorney general may designate any appropriate county attorney to act in the attorney general's behalf in any enforcement proceeding.

The department, with the approval of the governor and from the funds appropriated to the department for the care and treatment of persons with developmental disabilities or mental retardation, may transfer from time to time to the department of human services any amounts that may be requested by the department of human services to match federal funds available under Title XIX of the Social Security Act to assist any indigent or medically indigent persons to pay for the care and treatment of any person receiving services under this chapter. The department may expend federal funds so received for the purposes of this chapter."

SECTION 7. Section 334-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

""Conservator" shall have the meaning provided in section 560:5-102."

2. By amending the definitions of "guardian", "incapacitated person", and "protected person" to read:

""Guardian" [means a guardian of person or of property as provided in Article V of chapter 560.] shall have the meaning provided in section 560:5-102.

"Incapacitated person" [is as provided in Article V of chapter 560.] shall have the meaning provided in section 560:5-102.

"Protected person" [is as described in Article V of chapter 560.] shall have the meaning provided in section 560:5-102."

SECTION 8. Section 334-60.5, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(j) The court may find that the subject of the petition is an incapacitated or protected person, or both, under ~~[Article]~~ article V of chapter 560, and may appoint a guardian ~~[of the person,] or [property,]~~ conservator, or both, for the subject under the terms and conditions as the court shall determine."

SECTION 9. Section 346-235, Hawaii Revised Statutes, is amended to read as follows:

"**[§346-235] Consolidation with guardianship proceedings.** A proceeding for the appointment of a guardian ~~[of the person] or [of the property]~~ conservator under article V of chapter 560 may be consolidated with the proceedings under this part as the applicable circuit court and the family court, in the exercise of their discretion, shall permit."

SECTION 10. Section 346-237, Hawaii Revised Statutes, is amended to read as follows:

“**[§346-237()] Notice of proceedings.** After a petition has been filed, the matter shall be set for hearing and a notice of hearing shall be issued to all parties to the proceeding. The parties to the proceeding shall include:

- (1) The dependent adult;
- (2) Any caregiver or facility in which the dependent adult resides or is a patient;
- (3) The spouse and adult children of the dependent adult;
- (4) The parents of the dependent adult, unless waived by the court for good cause;
- (5) Any guardian ~~[of the person]~~ or ~~[property]~~ conservator who may have been appointed; and
- (6) Any other person or entity affected by the order for immediate protection.

Where the name or whereabouts of a potential party is unknown, the court may require the petitioner to set forth the reasonable efforts the petitioner made to ascertain the party's name or whereabouts and why the petitioner has been unable to determine those facts.”

SECTION 11. Section 353-24, Hawaii Revised Statutes, is amended to read as follows:

“§353-24 [Guardians] Conservators of committed persons, appointed when. Whenever a person is sentenced to imprisonment for any felony for a term exceeding one year, any judge having probate powers, upon application, may appoint a ~~[guardian]~~ conservator to have the care and management of the committed person's estate, real and personal, during the term of imprisonment or until the committed person is finally discharged from the sentence. The letters of ~~[guardianship]~~ conservatorship shall be revoked by the pardon or final discharge of the committed person, but the revocation shall not invalidate legal acts done by the ~~[guardian.]~~ conservator.”

SECTION 12. Section 353-25, Hawaii Revised Statutes, is amended to read as follows:

“§353-25 Powers and duties of guardian. Every ~~[guardian]~~ conservator appointed for any committed person shall pay all the just debts due from the committed person out of the committed person's personal estate, if sufficient, and if not, out of the committed person's real estate, upon obtaining an order for the sale thereof from the judge. The ~~[guardian]~~ conservator shall also settle all accounts of the committed person, and demand, sue for, and receive all debts due to the committed person, and, with the approbation of the judge, may compound for the same and give a discharge to the debtor. The ~~[guardian]~~ conservator shall appear for and represent the ward in all legal suits and proceedings, except when another person is appointed for that purpose.

The ~~[guardian]~~ conservator shall have all the rights and duties, as well as the responsibilities, respecting the management and disposal of the committed person's estate, as appertain to the guardian or conservator of a minor or insane person. The ~~[guardian]~~ conservator shall manage the estate without waste, and the profits thereof, so far as may be necessary, for the comfortable and suitable maintenance of the committed person's family, if there be any, and if the profits are insufficient for that purpose, may sell the real estate and apply the proceeds thereto, upon obtaining the license of the judge.”

SECTION 13. Section 353-26, Hawaii Revised Statutes, is amended to read as follows:

“§353-26 Removal of guardian, conservator. The guardian conservator may be removed, and another guardian conservator appointed in the former guardian's place, whenever the judge thinks there is just cause for removal.”

SECTION 14. Section 353-27, Hawaii Revised Statutes, is amended to read as follows:

“§353-27 Compensation; expenses. Every ~~such guardian~~ conservator shall ~~have such compensation~~ be compensated for the guardian's conservator's services ~~as~~ in an amount the judge before whom the ward's accounts are settled considers just and proper. The guardian conservator shall also be allowed the amount of reasonable expenses.”

SECTION 15. Section 353-28, Hawaii Revised Statutes, is amended to read as follows:

“§353-28 Property given to committed persons. All property given or in any manner whatsoever accruing to a committed person, shall vest in the committed person's guardian, conservator, if the committed person is sentenced for a term of years, to be disposed of in ~~like~~ the same manner ~~with~~ as the committed person's other property; or if the committed person is sentenced for life, shall vest in the committed person's heirs or legatees; provided that any funds accumulated by the committed person and placed into an account as provided under section 353-20 shall be under the control and management of the director.”

SECTION 16. Section 551-1, Hawaii Revised Statutes, is amended to read as follows:

“§551-1 Jurisdiction. Family courts shall have exclusive jurisdiction to appoint guardians ~~of the persons,~~ for minors, and circuit courts shall have exclusive jurisdiction to appoint ~~guardians of the property,~~ conservators for both adults and minors. The family and circuit courts shall have concurrent jurisdiction over guardianships for incapacitated adults. Either a guardian ~~of the person~~ or ~~the property~~ conservator, or both, may be appointed.”

SECTION 17. Section 551-21, Hawaii Revised Statutes, is amended to read as follows:

“§551-21 Small estates; clerk of the court to act when. Whenever so requested as provided in section ~~[560:5-404,]~~ 560:5-403, the court may appoint the clerk of the court of that circuit as ~~guardian of the property~~ conservator of the protected person whose estate is of a value of less than \$10,000 who shall serve in such capacity, with the full powers of and under like obligations as other guardians conservators appointed under this chapter and chapter 560, except that the clerk shall not be required to give any bond; nor shall the clerk be entitled to any commission or compensation except for expenses necessarily and actually incurred, nor shall the clerk or the protected person or the estate of the protected person be liable for any court costs arising out of the guardianship, except the actual cost of any advertising found necessary. The right of the clerk to act as the ~~guardian of the property~~ conservator shall not be affected by reason of any increase of the estate to an amount in excess of \$10,000 as the result of any accumulations of income accruing from the

original principal of the estate or by the increase in value of the principal; provided that if the estate reaches in value the sum of \$16,250, a ~~[guardian of the property]~~ conservator shall then be appointed under the preceding sections of this chapter or the court ~~[may]~~, in its discretion, may allow the ~~[guardian]~~ conservator appointed under this section to continue to act even though the total assets exceed \$16,250.”

SECTION 18. Section 551-22, Hawaii Revised Statutes, is amended to read as follows:

“§551-22 Estates less than \$100. When the whole estate of a person over the age of eighteen for whom a ~~[guardian of the property]~~ conservator could be appointed does not exceed the value of \$100, the court ~~[may]~~, in its discretion, without the appointment of a ~~[guardian]~~ conservator or the giving of bond, may authorize the deposit thereof in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court, or if the assets do not consist of money, authorize the delivery thereof to a suitable person designated by the court. The person receiving such money or other assets shall hold and dispose of the same in such manner as the court shall direct.”

SECTION 19. Section 551-35, Hawaii Revised Statutes, is amended to read as follows:

“§551-35 Natural guardian and conservator of person alleged to be incapacitated or in need of protective proceedings. The father and mother of an incapacitated or protected person are jointly and severally the person’s natural guardians ~~[of his person]~~ and ~~[property-]~~ conservators. They shall have equal powers and duties with respect to ~~[him]~~ the person and neither shall have any right superior to that of the other concerning ~~[his]~~ the person’s custody or control or any other matter affecting ~~[him];~~ the person; provided that if either parent dies or abandons the family or is incapable for any reason to act as guardian~~[-]~~ or conservator, or both, the guardianship or conservatorship, or both, devolves or devolve upon the other parent, and that when the parents live apart, the court may award the guardianship or conservatorship to either of them, having special regard to the interests of the incompetent adult person.”

SECTION 20. Section 551A-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The public guardian shall serve as guardian, limited guardian, testamentary guardian, or temporary guardian ~~[of the person]~~ of an incapacitated person when so appointed by the family court or by the circuit court under chapter 560. The public guardian may file a petition for the public guardian’s own appointment. Petitions for public guardianship may also be filed by any person, agency, or facility responsible for the support or care of individuals who:

- (1) Are not able to understand or adequately participate in decisions concerning their care; and
- (2) Have no relatives or friends willing and able to act as a guardian.”

SECTION 21. Section 551D-3, Hawaii Revised Statutes, is amended to read as follows:

“[E]§551D-3[H] Relation of attorney-in-fact to court-appointed fiduciary. (a) If, following execution of a durable power of attorney, a court of the principal’s domicile appoints a ~~[guardian of the property-]~~ conservator or other fiduciary charged with the management of all of the principal’s property or all of the

principal's property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. The fiduciary has the power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the ~~[guardian of the]~~ principal's ~~[property,]~~ conservator or guardian ~~[of the principal's person]~~ for consideration by the court if protective proceedings for the principal's ~~[person or]~~ property or person are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification."

SECTION 22. Section 554B-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"'Conservator' means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions."

2. By amending the definition of "legal representative" to read:

"'Legal representative' means a personal representative or ~~['guardian of the property,']~~ conservator."

3. By repealing the definition of "guardian of the property".

~~["'Guardian of the property' means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions."]~~

SECTION 23. Section 554B-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

"(b) A custodial trustee who has accepted the custodial trust property may resign by:

- (1) Delivering written notice to the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's ~~[guardian of the property,]~~ conservator, if any, and to the successor custodial trustee, if any[;]; and
- (2) Transferring, recording, or registering the custodial trust property in the name of and delivering the records to the successor custodial trustee identified under subsection (c).

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 554B-2 or 554B-3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within ninety days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's ~~[guardian of the property]~~ conservator becomes successor custodial trustee; and, if the beneficiary does not have a ~~[guardian of the property]~~ conservator or the ~~[guardian of the property]~~ conservator declines to act, the resigning custodial trustee may designate a successor custodial trustee."

2. By amending subsection (f) to read:

"(f) A beneficiary, the beneficiary's ~~[guardian of the property,]~~ conservator, an adult member of the beneficiary's family, ~~[a guardian of the person of]~~ the ~~[beneficiary,]~~ beneficiary's guardian, a person interested in the custodial trust property or as appropriate, or another person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to give bond, or for other appropriate relief."

SECTION 24. Chapter 560, Hawaii Revised Statutes, is amended by amending the title of article V to read as follows:

**“ARTICLE V
[PROTECTION OF PERSONS UNDER DISABILITY
AND THEIR PROPERTY]
GUARDIANSHIP AND PROTECTIVE PROCEEDINGS”**

SECTION 25. Section 560:1-201, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of “conservator”, “guardian”, “incapacitated person”, “minor”, “protected person”, “protective proceeding”, and “ward” to read:

““Conservator” ~~[means a person who is appointed by a court to manage the estate of a protected person, including a guardian of the property.]~~ shall have the meaning provided in section 560:5-102.

“Guardian” ~~[means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.]~~ shall have the meaning provided in section 560:5-102.

“Incapacitated person” ~~[means an individual described in section 560:5-101.]~~ shall have the meaning provided in section 560:5-102.

“Minor” ~~[means a person who is under eighteen years of age.]~~ shall have the meaning provided in section 560:5-102.

“Protected person” ~~[is as defined in section 560:5-101.]~~ shall have the meaning provided in section 560:5-102.

“Protective proceeding” means a proceeding ~~[described in section 560:5-101.]~~ held pursuant to part 4 of article V.

“Ward” ~~[means an individual described in section 560:5-101.]~~ shall have the meaning provided in section 560:5-102.”

2. By repealing the definition of “disability”.

~~[““Disability” means cause for a protective order as described in section 560:5-401.”]~~

SECTION 26. Section 560:3-915, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Unless contrary to an express provision in the will, the personal representative may discharge the obligation to distribute to a minor or person under other disability as authorized by section ~~[560:5-101]~~ 560:5-104 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.”

SECTION 27. Section 560:3-1214, Hawaii Revised Statutes, is amended to read as follows:

“§560:3-1214 Annual audit of accounts of clerk. Any other law to the contrary notwithstanding, the comptroller of the State shall audit not less frequently than annually the accounts and transactions of the clerks of the courts in their official capacity as ~~[guardians of the property of protected persons]~~ conservators or as personal representatives of small estates, and report the results of the audit to the judges of the respective courts.”

SECTION 28. Section 560:5-601, Hawaii Revised Statutes, is amended by amending the definition of "incapacitated person" to read as follows:

"“Incapacitated person” means a person as defined in section [560:5-101(2)] 560:5-102.”

SECTION 29. Section 571-2, Hawaii Revised Statutes, is amended by amending the definition of “guardianship of the person of a minor” to read as follows:

““Guardianship of [~~the person of~~] a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about the minor’s general welfare. It includes, but shall not necessarily be limited, in either number or kind to:

- (1) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;
- (2) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order;
- (3) The rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution; and
- (4) The authority to consent to the adoption of the minor and to make any other decision concerning the minor [~~which~~] that the minor’s parents could make, when the rights of the minor’s parents, or only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of the minor’s legal parents are deceased.”

SECTION 30. Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

“§571-14 Jurisdiction; adults. (a) Except as provided in sections 603-21.5 and 604-8, the court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child’s parent or guardian or by any other person having the child’s legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or 302A-1135, whether or not included in other provisions of this paragraph or paragraph (2)[-];
- (2) To try any adult charged with:
 - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
 - (B) An offense, other than a felony, against the person of the defendant’s husband or wife;
 - (C) Any violation of an order issued pursuant to chapter 586; or
 - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged[-];

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584[-];
- (4) In proceedings under chapter 575, the Uniform Desertion and Non-support Act, and under chapter 576B, the Uniform Interstate Family Support Act[-];

- (5) For commitment of an adult alleged to be mentally defective or mentally ill[-];
 - (6) In all proceedings for support between parent and child or between husband and wife[-];
 - (7) In all proceedings for pre-trial detention or waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-13 or 571-22[-];
 - (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders[-];
 - ~~(9) In all proceedings to appoint a guardian of the person of an adult.]; and~~
 - [(10)] (9) For the protection of dependent adults under chapter 346, part X.
- In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.

(b) The court shall have concurrent jurisdiction with the district court over violations of sections 707-712, 707-717, 707-722, 708-822, 708-823, 710-1010.5, 711-1106, and 711-1106.5 when multiple offenses are charged through complaint or indictment and at least one offense is a violation of an order issued pursuant to chapter 586 or a violation of section 709-906.

(c) The court shall have concurrent jurisdiction with the circuit court in all proceedings to appoint a guardian of an adult."

SECTION 31. Section 586-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A petition for relief under this chapter may be made by:

- (1) Any family or household member on the member’s own behalf or on behalf of a family or household member who is a minor or who is an incapacitated person as defined in section [560:5-101(2)] 560:5-102 or who is physically unable to go to the appropriate place to complete or file the petition; or
- (2) Any state agency on behalf of a person who is a minor or who is an incapacitated person as defined in section [560:5-101(2)] 560:5-102 or a person who is physically unable to go to the appropriate place to complete or file the petition on behalf of that person.”

SECTION 32. Section 586-10.5, Hawaii Revised Statutes, is amended to read as follows:

“§586-10.5 Reports by the department of human services. In cases where there are allegations of domestic abuse involving a family or household member who is a minor or an incapacitated person as defined in section [560:5-101(2),] 560:5-102, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, as required under chapters 350 and 587, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. The department of human services shall provide the family court with an oral or written report of the investigation’s progress on or before the hearing date.”

SECTION 33. Section 603-21.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The several circuit courts shall have concurrent jurisdiction with the family court over:

- (1) Any felony under section 571-14, violation of an order issued pursuant to chapter 586, or a violation of section 709-906 when multiple

- offenses are charged through complaint or indictment and at least one other offense is a criminal offense under subsection (a)(1); ~~[and]~~
- (2) Any felony under section 571-14 when multiple offenses are charged through complaint or indictment and at least one other offense is a violation of an order issued pursuant to chapter 586, a violation of section 709-906, or a misdemeanor under the jurisdiction of section 604-8~~[-]; and~~
 - (3) Guardianships and related proceedings concerning incapacitated adults pursuant to article V of chapter 560.

SECTION 34. Section 603-21.6, Hawaii Revised Statutes, is amended to read as follows:

“§603-21.6 Probate. The several circuit courts shall have power to ~~[grant]~~:

- (1) Grant probate of wills~~[-; to appoint]~~;
- (2) Appoint personal representatives~~[-; to determine]~~;
- (3) Determine the heirs at law or devisees of deceased persons and to decree the distribution of decedents' estates~~[-; to appoint]~~;
- (4) Appoint guardians ~~[of the property, to compel]~~ for incapacitated adults;
- (5) Appoint conservators;
- (6) Compel personal representatives and such guardians and conservators to perform their respective trusts and to account in all respects for the discharge of their official duties~~[-; to remove]~~;
- (7) Remove any personal representative or any such guardian or conservator; and ~~[to do]~~
- (8) Do all other things as provided in chapter 560.”

SECTION 35. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) **PART I**

Action or proceeding, general:

- (1) Civil action or special proceeding, unless another item in part I applies \$200
- (2) Appeal to a circuit court \$100
- (3) Transfer of action to circuit court from district court, in addition to district court fees \$125

Trusts:

- (4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F) approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter \$100
- (5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust, for each such matter \$100
- (6) Accounting, this fee to be paid for each account filed and to include the settlement of the account \$10
- (7) Vesting order no charge under part I
- (8) Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section no charge under part I
- (8a) Registration of a trust, or release of registration, under chapter 560 \$3
- (9) Any other proceeding relating to a trust \$15

ACT 161

[Guardianship of estate or conservatorship:] Conservatorship:

- (10) Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings; (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter \$100
- (11) Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter \$15
- (12) Accounting, same as provided by item (6) in relation to a trust \$10
- (13) Any other proceeding relating to ~~[guardianship of an estate, or]~~ a conservatorship no charge under part I

Guardianship:

- (13a) Guardianship, including all matters of the nature listed in items (4) to (9), whether in family or circuit court \$100

Probate (decedents' estates). These fees include all matters of the nature listed in items (4) to (9), without additional charge:

- (14) Probate, administration, domiciliary foreign personal representative, or ancillary administration, this fee to be paid once only for each decedent's estate \$100

Family court cases:

- (15) Matrimonial action (annulment, divorce, separation, or separate maintenance) \$100
- (16) Adoption \$100
- (17) Guardianship ~~[of the person]~~, including all matters of the nature listed in items (4) to (9) ~~[\$100]~~
As provided in item 13(a)
- (18) Termination of parental rights no charge under part I
- (19) Any other family court proceeding, except motions or other pleadings in matrimonial, adoption, and guardianship actions, but including without limitation custody proceedings even if in the form of an habeas corpus proceeding \$15"

SECTION 36. Sections 327-3, 327E-3, 327E-16, 334-60.4, 346-45, 346-237, 352-8, 412:8-201, 553A-18, 553A-19, 554B-2, 554B-5, 554B-16, 554B-17, 571-11, 571-63, and 574-5, Hawaii Revised Statutes, are amended, by substituting the word "guardian" wherever the term "guardian of the person", or like term, appears, as the context requires; by substituting the word "guardianship" wherever the term "guardianship of the person", or like term, appears, as the context requires; by substituting the word "conservator" wherever the term "guardian of the property", or like term, appears, as the context requires; and by substituting the word "conservatorship" wherever the term "guardianship of the property", or like term, appears, as the context requires.

SECTION 37. Parts 1, 2, 3, and 4 of article V of chapter 560, Hawaii Revised Statutes, are repealed.

SECTION 38. This Act shall not affect any action commenced, proceeding brought, or right accrued prior to its effective date.

SECTION 39. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 40. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 41. This Act shall take effect on January 1, 2005.

(Approved July 2, 2004.)

Note

1. This subsection is superseded by section 4 of Act 224.

ACT 162

H.B. NO. 1259

A Bill for an Act Relating to the Uniform Commercial Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article to be designated and to read as follows:

**“ARTICLE 1
GENERAL PROVISIONS
PART 1. GENERAL PROVISIONS**

§490:1-101 Short titles. (a) This chapter may be cited as the Uniform Commercial Code.

(b) This article may be cited as Uniform Commercial Code - General Provisions.

§490:1-102 Scope of article. This article applies to a transaction to the extent that it is governed by another article of this chapter.

§490:1-103 Construction of chapter to promote its purposes and policies; applicability of supplemental principles of law. (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are:

- (1) To simplify, clarify, and modernize the law governing commercial transactions;
- (2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause shall supplement its provisions.

§490:1-104 Construction against implied repeal. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§490:1-105 Severability. If any provision or clause of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

§490:1-106 Use of singular and plural; gender. In this chapter, unless the statutory context otherwise requires:

- (1) Words in the singular number include the plural, and those in the plural include the singular; and
- (2) Words of any gender also refer to any other gender.

§490:1-107 Section captions. Section captions are part of this chapter.

§490:1-108 Relation to electronic signatures in global and national commerce act. This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001 et seq., except that nothing in this article modifies, limits, or supersedes section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in section 7003(b) of that Act.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§490:1-201 General definitions. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this chapter that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this chapter that apply to particular articles or parts thereof:

“Action”, in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

“Aggrieved party” means a party entitled to pursue a remedy.

“Agreement”, as distinguished from “contract”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 490:1-303.

“Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, financial services loan company, and trust company.

“Bearer” means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.

“Bill of lading” means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

“Branch” includes a separately incorporated foreign branch of a bank.

“Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

“Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to

recover the goods from the seller under article 2 may be a buyer in ordinary course of business. "Buyer in the ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

"Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

- (1) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
- (2) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

"Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

"Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this chapter and as supplemented by any other applicable law.

"Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

"Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

"Delivery", with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

"Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document shall purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

"Fault" means a default, breach, or wrongful act or omission.

"Fungible goods" means:

- (1) Goods that any unit, by nature or usage of trade, is the equivalent of any other like unit; or
- (2) Goods that by agreement are treated as equivalent.

"Genuine" means free of forgery or counterfeiting.

"Good faith" means honesty in fact.

"Holder" means:

- (1) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or
- (2) The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

"Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

"Insolvent" means:

- (1) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
- (2) Being unable to pay debts as they become due; or
- (3) Being insolvent within the meaning of federal bankruptcy law.

“Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

“Organization” means a person other than an individual.

“Party”, as distinct from a “third party”, means a person that has engaged in a transaction or made an agreement subject to this chapter.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

“Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

“Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

“Purchaser” means a person that takes by purchase.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

“Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

“Right” includes remedy.

“Security interest” means an interest in personal property or fixtures that secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 490:2-401, but a buyer may also acquire a “security interest” by complying with article 9. Except as otherwise provided in section 490:2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 490:2-401 is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to section 490:1-203.

“Send” in connection with a writing, record, or notice means:

- (1) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

- (2) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

“Signed” includes any symbol executed or adopted with present intention to adopt or accept a writing.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

“Surety” includes a guarantor or other secondary obligor.

“Term” means a portion of an agreement that relates to a particular matter.

“Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

“Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.

“Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

§490:1-202 Notice; knowledge. (a) Subject to subsection (f), a person has “notice” of a fact if the person:

- (1) Has actual knowledge of it;
- (2) Has received a notice or notification of it; or
- (3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(c) “Discover”, “learn”, or words of similar import refer to knowledge rather than to reason to know.

(d) A person “notifies” or “gives” a notice or notification to another by taking steps reasonably required to inform the other in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person “receives” a notice or notification when:

- (1) It comes to that person’s attention; or
- (2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

§490:1-203 Lease distinguished from security interest. (a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of

the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

- (1) The original term of the lease is equal to or greater than the remaining economic life of the goods;
 - (2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
 - (3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or
 - (4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.
- (c) A transaction in the form of a lease does not create a security interest merely because:
- (1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
 - (2) The lessee assumes risk of loss of the goods;
 - (3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
 - (4) The lessee has an option to renew the lease or to become the owner of the goods;
 - (5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
 - (6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.
- (d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:
- (1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
 - (2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.
- (e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement shall be determined with reference to the facts and circumstances at the time the transaction is entered into.

§490:1-204 Value. Except as otherwise provided in articles 3, 4, and 5, a person gives value for rights if the person acquires them:

- (1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) As security for, or in total or partial satisfaction of, a preexisting claim;
- (3) By accepting delivery under a preexisting contract for purchase; or
- (4) In return for any consideration sufficient to support a simple contract.

§490:1-205 Reasonable time; seasonableness. (a) Whether a time for taking an action required by this chapter is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

§490:1-206 Presumptions. Whenever this chapter creates a “presumption” with respect to a fact, or provides that a fact is “presumed”, the trier of fact shall find the existence of the fact unless evidence is introduced that supports a finding of its nonexistence.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

§490:1-301 Territorial applicability; parties’ power to choose applicable law. (a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) Section 490:2-402;
- (2) Sections 490:2A-105 and 490:2A-106;
- (3) Section 490:4-102
- (4) Section 490:4A-507;
- (5) Section 490:5-116;
- (6) Section 490:8-110; and
- (7) Sections 490:9-301 through 490:9-307.

§490:1-302 Variation by agreement. (a) Except as otherwise provided in subsection (b) or elsewhere in this chapter, the effect of provisions of this chapter may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this chapter may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this chapter requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this chapter of the phrase “unless otherwise agreed,” or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

§490:1-303 Course of performance, course of dealing, and usage of trade. (a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

- (1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and
- (2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of a usage of trade shall be proved as facts. If it is established that the usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade shall be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

- (1) Express terms prevail over course of performance, course of dealing, and usage of trade;
- (2) Course of performance prevails over course of dealing and usage of trade; and
- (3) Course of dealing prevails over usage of trade.

(f) Subject to section 490:2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

§490:1-304 Obligation of good faith. Every contract or duty within this chapter imposes an obligation of good faith in its performance and enforcement.

§490:1-305 Remedies to be liberally administered. (a) The remedies provided by this chapter shall be liberally administered so that the aggrieved party is put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this chapter or by other rule of law.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

§490:1-306 Waiver or renunciation of claim or right after breach. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

§490:1-307 Prima facie evidence by third-party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

§490:1-308 Performance or acceptance under reservation of rights. (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest”, or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

§490:1-309 Option to accelerate at will. A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure,” or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

§490:1-310 Subordinated obligations. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.”

SECTION 2. Section 155-11, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In case of the sale or transfer of the mortgaged land or goods [that] in which the department has a security interest, as that term is defined in section [490:1-201(37),] 490:1-201, the department may permit the mortgage or encumbrance to be assumed by the purchaser. In case of the death of the borrower, the borrower’s heir or heirs, or the borrower’s legal representative or representatives, shall have the option within six months of the death to assume the mortgage of the deceased. The department or its agents [may], pending the exercise of the option and pending possession being taken by the heirs or representatives, may take possession of all mortgaged property and carry on the operation connected therewith, and the expense of the same shall be added to the principal due upon the mortgage to bear interest at the applicable rate.”

SECTION 3. Section 489E-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This chapter does not apply to a transaction to the extent it is governed by:

- (1) A law governing the creation and execution of wills, codicils, or testamentary trusts;
- (2) The Uniform Commercial Code other than [~~sections 490:1-107 and 490:1-206,~~] section 490:1-201, article 2, and article 2A; and
- (3) A law or rule governing notice of:
 - (i) Default, including but not limited to notices relating to acceleration, repossession, eviction, foreclosure, or the right to cure;
 - (ii) Utility shutoff, including water, telephone, gas and electricity; or
 - (iii) Cancellation, termination, lapse, or material alteration of a contract of insurance, insurance benefits, life settlement or viatical settlement agreement, or service contract.”

SECTION 4. Section 489E-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section ~~[490:1-201(20)]~~ 490:1-201 of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 490:3-302(a), 490:7-501, or 490:9-330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.”

SECTION 5. Section 490:2-202, Hawaii Revised Statutes, is amended to read as follows:

“§490:2-202 Final written expression: parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or ~~[which]~~ that are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented by:

- (a) ~~[By]~~ Course of performance, course of dealing, or usage of trade (section ~~[490:1-205] or by course of performance (section 490:2-208);~~ 490:1-303); and
- (b) ~~[By evidence]~~ Evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.”

SECTION 6. Section 490:2A-501, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Except as otherwise provided in section ~~[490:1-106(1) or]~~ 490:1-305(a), this ~~[Article]~~ article, or the lease agreement, the rights and remedies referred to in subsections (b) and (c) are cumulative.”

SECTION 7. Section 490:2A-518, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 490:2A-504) or otherwise determined pursuant to agreement of the parties (sections ~~[490:1-102(3)]~~ 490:1-302 and 490:2A-503), if a lessee’s cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term ~~[which]~~ that is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor’s default.”

SECTION 8. Section 490:2A-519, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 490:2A-504) or otherwise determined pursuant to agreement of the parties (sections ~~[490:1-102(3)]~~ 490:1-302 and 490:2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that

for any reason does not qualify for treatment under section 490:2A-518(b), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default."

SECTION 9. Section 490:2A-527, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 490:2A-504) or otherwise determined pursuant to agreement of the parties (sections ~~[490:1-102(3)]~~ 490:1-302 and 490:2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term ~~[which]~~ that is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 490:2A-530, less expenses saved in consequence of the lessee's default."

SECTION 10. Section 490:2A-528, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 490:2A-504) or otherwise determined pursuant to agreement of the parties (sections ~~[490:1-102(3)]~~ 490:1-302 and 490:2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 490:2A-527(b), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 490:2A-523(a) or 490:2A-523(c)(1), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 490:2A-530, less expenses saved in consequence of the lessee's default."

SECTION 11. Section 490:3-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In this ~~[Article:]~~ article:

- (1) "Acceptor" means a drawee that has accepted a draft.
- (2) "Drawee" means a person ordered in a draft to make payment.
- (3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.
- (4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

- (6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- (7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this ~~[Article]~~ article or ~~[Article]~~ article 4.
- (8) "Party" means a party to an instrument.
- (9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
- (10) "Prove" with respect to a fact means to meet the burden of establishing the fact (section ~~[490:1-201(8)]~~ 490:1-201).
- (11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser."

SECTION 12. Section 490:4A-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In this ~~[Article:]~~ article:

- (1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.
- (2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, financial services loan company, and trust company. A branch or separate office of a bank is a separate bank for purposes of this ~~[Article:]~~ article.
- (3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.
- (4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.
- (5) "Funds-transfer system" means a wire transfer network, automated ~~[clearing house,]~~ clearinghouse, or other communication system of a ~~[clearing house]~~ clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.
- (6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

- (7) “Prove” with respect to a fact means to meet the burden of establishing the fact (section [~~490:1-201(8)~~] 490:1-201).”

SECTION 13. Section 490:4A-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“~~[(a)]~~ The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section [~~490:1-201(27)~~] 490:1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.”

SECTION 14. Section 490:4A-204, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Reasonable time under subsection (a) may be fixed by agreement as stated in section [~~490:1-204(1)~~] 490:1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.”

SECTION 15. Section 490:5-103, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) With the exception of this subsection, subsections (a) and (d), sections 490:5-102(a), 490:5-106(d), and 490:5-114(d), the effect of this [~~Article~~] article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking, except to the extent prohibited in sections [~~490:1-102(3)~~] 490:1-302 and 490:5-117(d). A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this [~~Article~~] article.”

SECTION 16. Section 490:2-208, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 490:2A-207, Hawaii Revised Statutes, is repealed.

SECTION 18. Article 1 of chapter 490, Hawaii Revised Statutes, is repealed.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 20. This Act shall take effect upon its approval.

(Approved July 2, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Uniform Commercial Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE 7
DOCUMENTS OF TITLE**

PART 1. GENERAL

§490:7-101 Short title. This article shall be known and may be cited as Uniform Commercial Code – Documents of Title.

§490:7-102 Definitions and index of definitions. (a) In this article, unless the context otherwise requires:

- (1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
- (2) “Carrier” means a person that issues a bill of lading.
- (3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.
- (4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.
- (5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.
- (6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.
- (8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.
- (9) “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.
- (10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (11) “Shipper” means a person that enters into a contract of transportation with a carrier.
- (12) “Sign” means, with present intent to authenticate or adopt a record:
 - (A) To execute or adopt a tangible symbol; or

- (B) To attach to or logically associate with the record an electronic sound, symbol, or process.
- (13) "Warehouse" means a person engaged in the business of storing goods for hire.
- (b) Definitions in other articles applying to this article and the sections in which they appear are:
 - (1) "Contract for sale", section 490:2-106.
 - (2) "Lessee in ordinary course of business", section 490:2A-103.
 - (3) "Receipt" of goods, section 490:2-103.
- (c) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§490:7-103 Relation of article to treaty or statute. (a) This article is subject to any treaty or statute of the United States or regulatory statute of this State to the extent the treaty, statute, or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. section 7001, et. seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act, chapter 489E, and this article, this article governs.

§490:7-104 Negotiable and nonnegotiable document of title. (a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

§490:7-105 Reissuance in alternative medium. (a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

- (1) The person entitled under the electronic document surrenders control of the electronic document to the issuer; and
- (2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.
- (b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):
 - (1) The electronic document ceases to have any effect or validity; and
 - (2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

- (1) The person entitled under the tangible document surrenders possession of the tangible document to the issuer; and
- (2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

- (1) The tangible document ceases to have any effect or validity; and
- (2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

§490:7-106 Control of electronic document of title. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

- (1) A single authoritative copy of the document exists that is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
- (2) The authoritative copy identifies the person asserting control as:
 - (A) The person to which the document was issued; or
 - (B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;
- (3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
- (4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

PART 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

§490:7-201 Person that may issue a warehouse receipt; storage under bond. (a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

§490:7-202 Form of warehouse receipt; effect of omission. (a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

- (1) A statement of the location of the warehouse facility where the goods are stored;
- (2) The date of issue of the receipt;
- (3) The unique identification code of the receipt;
- (4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;
- (5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;
- (6) A description of the goods or the packages containing them;
- (7) The signature of the warehouse or its agent;
- (8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
- (9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to this chapter and do not impair its obligation of delivery under section 490:7-403 or its duty of care under section 490:7-204. Any contrary provision is ineffective.

§490:7-203 Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

- (1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or
- (2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

§490:7-204 Duty of care; contractual limitation of warehouse’s liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse’s liability may be increased on part

or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

§490:7-205 Title under warehouse receipt defeated in certain cases. A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

§490:7-206 Termination of storage at warehouse's option. (a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 490:7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and section 490:7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

§490:7-207 Goods must be kept separate; fungible goods. (a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

§490:7-208 Altered warehouse receipts. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as autho-

rized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

§490:7-209 Lien of warehouse. (a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

- (1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
 - (A) Actual or apparent authority to ship, store, or sell;
 - (B) Power to obtain delivery under section 490:7-403; or
 - (C) Power of disposition under sections 490:2-403, 490:2A-304(2), 490:2A-305(2), 490:9-320, or 490:9-321(c), or other statute or rule of law; or
- (2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

§490:7-210 Enforcement of warehouse's lien. (a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better

price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

- (1) All persons known to claim an interest in the goods must be notified.
- (2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
- (3) The sale must conform to the terms of the notification.
- (4) The sale must be held at the nearest suitable place to where the goods are held or stored.
- (5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of wilful violation, is liable for conversion.

PART 3. BILLS OF LADING: SPECIAL PROVISIONS

§490:7-301 Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load, and count”; improper handling. (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown”, “said to contain”, “shipper’s weight, load, and count”, or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading;

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as “shipper’s weight, load, and count”, or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper’s request in a record to do so. In that case, “shipper’s weight” or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words “shipper’s weight, load, and count” or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.

§490:7-302 Through bills of lading and similar documents of title. (a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person’s obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

- (1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and
- (2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

§490:7-303 Diversion; reconsignment; change of instructions. (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

- (1) The holder of a negotiable bill;
- (2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;
- (3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or
- (4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

§490:7-304 Tangible bills of lading in a set. (a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

§490:7-305 Destination bills. (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section

490:7-105, may procure a substitute bill to be issued at any place designated in the request.

§490:7-306 Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

§490:7-307 Lien of carrier. (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

§490:7-308 Enforcement of carrier's lien. (a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in section 490:7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of wilful violation, is liable for conversion.

§490:7-309 Duty of care; contractual limitation of carrier's liability. (a)

A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

**PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING:
GENERAL OBLIGATIONS**

§490:7-401 Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title even if:

- (1) The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;
- (2) The issuer violated laws regulating the conduct of its business;
- (3) The goods covered by the document were owned by the bailee when the document was issued; or
- (4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

§490:7-402 Duplicate document of title; overissue. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 490:7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

§490:7-403 Obligation of bailee to deliver; excuse. (a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

- (1) Delivery of the goods to a person whose receipt was rightful as against the claimant;
- (2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

- (3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;
 - (4) The exercise by a seller of its right to stop delivery pursuant to section 490:2-705 or by a lessor of its right to stop delivery pursuant to section 490:2A-526;
 - (5) A diversion, reconsignment, or other disposition pursuant to section 490:7-303;
 - (6) Release, satisfaction, or any other personal defense against the claimant; or
 - (7) Any other lawful excuse.
- (b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.
- (c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 490:7-503(a):
- (1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and
 - (2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

§490:7-404 No liability for good-faith delivery pursuant to document of title. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

- (1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or
- (2) The person to which the bailee delivered the goods did not have authority to receive the goods.

PART 5. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

§490-7:501 Form of negotiation and requirements of due negotiation. (a) The following rules apply to a negotiable tangible document of title:

- (1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.
- (2) If the document's original terms run to bearer, it is negotiated by delivery alone.
- (3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.
- (4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.
- (5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

- (b) The following rules apply to a negotiable electronic document of title:

- (1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.
- (2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.
- (3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.
- (c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.
- (d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

§490:7-502 Rights acquired by due negotiation. (a) Subject to sections 490:7-205 and 490:7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

- (1) Title to the document;
 - (2) Title to the goods;
 - (3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
 - (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.
- (b) Subject to section 490:7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:
- (1) The due negotiation or any prior due negotiation constituted a breach of duty;
 - (2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or
 - (3) A previous sale or other transfer of the goods or document has been made to a third person.

§490:7-503 Document of title to goods defeated in certain cases. (a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

- (1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
 - (A) Actual or apparent authority to ship, store, or sell;
 - (B) Power to obtain delivery under Section 490:7-403; or

- (C) Power of disposition under section 490:2-403, 490:2A-304(2), 490:2A-305(2), 490:9-320, or 490:9-321(c) or other statute or rule of law; or
- (2) Acquiesce in the procurement by the bailor or its nominee of any document.
 - (b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 490:7-504 to the same extent as the rights of the issuer or a transferee from the issuer.
 - (c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

§490:7-504 Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery. (a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

- (1) By those creditors of the transferor which could treat the transfer as void under section 490:2-402 or 490:2A-308;
- (2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
- (3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
- (4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 490:2-705 or a lessor under section 490:2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

§490:7-505 Indorser not guarantor for other parties. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

§490:7-506 Delivery without indorsement: right to compel indorsement. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

§490:7-507 Warranties on negotiation or delivery of document of title. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 490:7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) The document is genuine;
- (2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

§490:7-508 Warranties of collecting bank as to documents of title. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

§490:7-509 Adequate compliance with commercial contract. Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by article 2, 2A, or 5.

PART 6. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

§490:7-601 Lost, stolen, or destroyed documents of title. (a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court shall not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

§490:7-602 Judicial process against goods covered by negotiable document of title. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

§490:7-603 Conflicting claims; interpleader. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

PART 7. MISCELLANEOUS PROVISIONS

§490:7-701 Applicability. This article applies to a document of title that is issued or a bailment that arises on or after the effective date of this article. This article does not apply to a document of title that is issued or a bailment that arises before the effective date of this article even if the document of title or bailment would be subject to this article if the document of title had been issued or bailment had arisen on or after the effective date of this article. This article does not apply to a right of action that has accrued before the effective date of this article.

§490:7-702 Savings clause. A document of title issued or a bailment that arises before the effective date of this article and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by the act that enacted this article as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.”

SECTION 2. Section 490:1-201, Hawaii Revised Statutes, is amended to read as follows:

“§490:1-201 General definitions. Subject to additional definitions contained in the subsequent [Articles] articles of this chapter which are applicable to specific [Articles] articles or [Parts] parts thereof, and unless the context otherwise requires, in this chapter:

(1) “Action” in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) “Aggrieved party” means a party entitled to resort to a remedy.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 490:1-205, 490:2-208, and 490:2A-207). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 490:1-103). (Compare “Contract”.)

(4) “Bank” means any person engaged in the business of banking.

(5) “Bearer” means a person in control of a negotiable electronic document of title or the person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods[-, and includes an airbill. ~~“Airbill” means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air way bill.~~]. The term does not include a warehouse receipt.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) ~~“Conspicuous” [÷ A term or clause is conspicuous when it is], with reference to a term, means so written, displayed, or presented that a reasonable person against [whom it] which the term is to operate ought to have noticed it. [A printed heading in capitals (as: NON NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is “conspicuous” if it is in larger or other contrasting type or color. But in a telegram any stated term is “conspicuous”]. Whether a term or clause is “conspicuous” or not is [for] a decision [by] for the court. Conspicuous terms include the following:~~

- ~~(a) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and~~
- ~~(b) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.~~

(11) “Contract” means the total legal obligation which results from the parties’ agreement as affected by this chapter and any other applicable rules of law. (Compare “Agreement”).

(12) “Creditor” includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and a personal representative of an insolvent debtor’s or assignor’s estate.

(13) “Defendant” includes a person in the position of defendant in a cross-action or counterclaim.

(14) “Delivery” with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) ~~“Document of title” [includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which] means a record:~~

- ~~(a) That in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of [it] the record is entitled to receive, control, hold, and dispose of the [document] record and the goods [it] the record covers[÷ To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.]; and~~

- (b) That purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

- (16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

- (18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

- (20) "Holder" ~~[with respect to a negotiable instrument,]~~ means ~~[the]~~:

- (a) The person in possession if the instrument that is payable either to bearer or, in the case of an instrument payable to an identified person, if the identified that is the person [is] in possession[- "Holder" with respect to a document of title means the];

- (b) The person in possession [if the goods are deliverable to bearer or to the order of the person in possession.] of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

- (c) The person in control of a negotiable electronic document of title.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) [A] Subject to paragraph (27), a person has "notice" of a fact [when] if the person:

- (a) ~~[He has]~~ Has actual knowledge of it; ~~[or]~~
 (b) ~~[He has]~~ Has received a notice or notification of it; or
 (c) From all the facts and circumstances known to ~~[him]~~ the person at the time in question ~~[he]~~, has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when ~~[he]~~ the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not ~~[such other]~~ the other person actually comes to

know of it. [A] Subject to paragraph (27), a person “receives” a notice or notification when:

- (a) It comes to [his] that person’s attention; or
- (b) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at ~~[any other place]~~ another location held out by ~~[him]~~ that person as the place for receipt of such communications.

(27) Notice, knowledge, or a notice or notification received by an organization means it is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to [his] the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of [his] the individual’s regular duties or ~~[unless he]~~ the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) “Organization” includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) “Party”, as distinct from “third party”, means a person who has engaged in a transaction or made an agreement within this chapter.

(30) “Person” includes an individual or an organization (see section 490:1-102).

(31) “Presumption” or “presumed” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) “Purchase” includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) “Purchaser” means a person who takes by purchase.

(34) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) “Representative” includes an agent, an officer of a corporation or association, and a trustee, personal representative of an estate, or any other person empowered to act for another.

(36) “Rights” includes remedies.

~~[For purposes of this subsection (37):]~~¹

(37) (a) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 490:2-401 is not a “security interest”, but a buyer may also acquire a “security interest” by complying with Article 9. Except as otherwise provided in section 490:2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 490:2-401) is limited in effect to a reservation of a “security interest”.

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

- [(a)] (i) The original term of the lease is equal to or greater than the remaining economic life of the goods;
- [(b)] (ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
- [(c)] (iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or
- [(d)] (iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides that:

- [(a)] (i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- [(b)] (ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;
- [(c)] (iii) The lessee has an option to renew the lease or to become the owner of the goods;
- [(d)] (iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- [(e)] (v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) For purposes of this subsection (37):

- [(x)] (i) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;
- [(y)] (ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and
- [(z)] (iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any a writing, record, or notice means [tø];

- (a) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances~~[-The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending-]; or~~
- (b) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
- (39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.
- (40) "Surety" includes guarantor.
- (41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.
- (42) "Term" means that portion of an agreement which relates to a particular matter.
- (43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.
- (44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 490:3-303, 490:4-210, and 490:4-211) a person gives "value" for rights if he acquires them:
 - (a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
 - (b) As security for or in total or partial satisfaction of a preexisting claim; or
 - (c) By accepting delivery pursuant to a preexisting contract for purchase; or
 - (d) Generally, in return for any consideration sufficient to support a simple contract.
- (45) "Warehouse receipt" means a [receipt] document of title issued by a person engaged in the business of storing goods for hire.
- (46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form."

SECTION 3. Section 490:1-201, Hawaii Revised Statutes, is amended by amending the definitions of "bearer", "bill of lading", "delivery", "document of title", "holder", and "warehouse receipts" in subsection (b) to read as follows:

""Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

""Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

""Delivery", with respect to an electronic document of title means voluntary transfer of control, and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

""Document of title" [includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which] means a record:

- (1) That in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of [it]

the record is entitled to receive, control, hold, and dispose of the [document] record and the goods [it] the record covers[. To be a document of title, a document must² purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.]; and

- (2) That purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

"Holder" means:

- (1) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; [or]
- (2) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession[.]; or
- (3) The person in control of a negotiable electronic document of title.

"Warehouse receipt" means a [receipt] document of title issued by a person engaged in the business of storing goods for hire."

SECTION 4. Section 490:2-103, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) The following definitions in other [Articles] articles apply to this [Article:] article:

- "Check". Section 490:3-104.
- "Consignee". Section 490:7-102.
- "Consignor". Section 490:7-102.
- "Consumer goods". Section 490:9-102.
- "Control". Section 490:7-106.
- "Dishonor". Section 490:3-502.
- "Draft". Section 490:3-104."

SECTION 5. Section 490:2-104, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) "Financing agency" means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 490:2-707)."

SECTION 6. Section 490:2-310, Hawaii Revised Statutes, is amended to read as follows:

“§490:2-310 Open time for payment or running of credit; authority to ship under reservation. Unless otherwise agreed:

- (a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; ~~and~~
- (b) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 490:2-513);
- (c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b), then payment is due ~~at~~ regardless of where the goods are to be received:
 - (1) At the time and place at which the buyer is to receive delivery of the tangible documents [regardless of where the goods are to be received]; or
 - (2) At the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and
- (d) Where the seller is required or authorized to ship the goods on credit, the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.”

SECTION 7. Section 490:2-323, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set;

- (a) Due tender of a simple part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of section 490:2-508); and
- (b) Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing indemnity which the buyer in good faith deems adequate.”

SECTION 8. Section 490:2-401, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Unless otherwise explicitly agreed, where delivery is to be made without moving the goods[;]:

- (a) If the seller is to deliver a tangible document of title, title passes at the time when and the place where ~~he~~ the seller delivers such documents[;], and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or
- (b) If the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.”

SECTION 9. Section 490:2-503, Hawaii Revised Statutes, is amended by amending subsections (4) and (5) to read as follows:

“(4) Where goods are in the possession of a bailee and are to be delivered without being moved;

- (a) Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but
- (b) Tender to the buyer of a nonnegotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9, receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.
- (5) Where the contract requires the seller to deliver documents:
 - (a) ~~[He]~~ The seller must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of section 490:2-323); and
 - (b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the document constitutes nonacceptance or rejection."

SECTION 10. Section 490:2-505, Hawaii Revised Statutes, is amended to read as follows:

"§490:2-505 Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

- (a) ~~[His]~~ The seller's procurement of a negotiable bill of lading to ~~[his]~~ the seller's own order or otherwise reserves in ~~[him]~~ the seller a security interest in the goods. ~~[His]~~ The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
- (b) A nonnegotiable bill of lading to ~~himself~~ the seller or ~~[his]~~ the seller's nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 490:2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document~~[-]~~ of title."

SECTION 11. Section 490:2-506, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) The right to reimbursement of a financing agency which has in good faith honored as purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular ~~[on its face]~~."

SECTION 12. Section 490:2-509, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

- (a) On ~~[his]~~ the buyer's receipt of possession or control of a negotiable document of title covering the goods; ~~[or]~~
- (b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or
- (c) After ~~[his]~~ the buyer's receipt of possession or control of a non-negotiable document of title or other ~~[written]~~ direction to deliver~~[,]~~ in a record, as provided in subsection (4)(b) of section 490:2-503."

SECTION 13. Section 490:2-605, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Payment against documents made without reservation of rights preclude recovery of the payment for defects apparent ~~[on the face of]~~ in the documents."

SECTION 14. Section 490:2-705, Hawaii Revised Statutes, is amended by amending subsections (2) and (3) to read as follows:

- "(2) As against such buyer the seller may stop delivery until
- (a) Receipt of the goods by the buyer; or
 - (b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
 - (c) Such acknowledgment to the buyer by a carrier by reshipment or as ~~[warehouseman;]~~ a warehouse; or
 - (d) Negotiation to the buyer of any negotiable document of title covering the goods.
- (3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
- (b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
 - (c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.
 - (d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor."

SECTION 15. Section 490:2A-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) In this Article unless the context otherwise requires:
- (1) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~[receiving]~~ acquiring goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
 - (2) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
 - (3) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A

commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

- (4) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.
- (5) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.
- (6) "Fault" means wrongful act, omission, breach, or default.
- (7) "Finance lease" means a lease with respect to which:
 - (i) The lessor does not select, manufacture, or supply the goods;
 - (ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
 - (iii) One of the following occurs:
 - (A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
 - (B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
 - (C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
 - (D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
- (8) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 490:2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

- (9) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.
- (10) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.
- (11) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.
- (12) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.
- (13) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.
- (14) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
- (15) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to that person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (16) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
- (17) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.
- (18) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.
- (19) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
- (20) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
- (21) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

- (22) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
- (23) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
- (24) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.
- (25) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.
- (26) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default."

SECTION 16. Section 490:2A-514, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents."

SECTION 17. Section 490:2A-526, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In pursuing its remedies under subsection (a), the lessor may stop delivery until:

- (1) Receipt of the goods by the lessee;
- (2) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (3) Such an acknowledgment to the lessee by a carrier via reshipment or as ~~[warehouseman]~~ a warehouse."

SECTION 18. Section 490:4-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following definitions in other ~~[Articles]~~ articles apply to this ~~[Article:]~~ article:

- "Acceptance". Section 490:3-409.
- "Alteration". Section 490:3-407.
- "Cashier's check". Section 490:3-104.
- "Certificate of deposit". Section 490:3-104.
- "Certified check". Section 490:3-409.
- "Check". Section 490:3-104.
- "Control". Section 490:7-106.
- "Good faith". Section 490:3-103.
- "Holder in due course". Section 490:3-302.
- "Instrument". Section 490:3-104.
- "Notice of dishonor". Section 490:3-503.
- "Order". Section 490:3-103.
- "Ordinary care". Section 490:3-103.
- "Person entitled to enforce". Section 490:3-301.
- "Presentment". Section 490:3-501.
- "Promise". Section 490:3-103.
- "Prove". Section 490:3-103.
- "Teller's check". Section 490:3-104.
- "Unauthorized signature". Section 490:3-403."

SECTION 19. Section 490:4-210, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

- (1) No security agreement is necessary to make the security interest enforceable (section 490:9-203(b)(3)(A));
- (2) No filing is required to perfect the security interest; and
- (3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.”

SECTION 20. Section 490:9-102, Hawaii Revised Statutes, is amended by amending the definition of “document” in subsection (a) to read as follows:

““Document” means a document of title or a receipt of the type described in section [490:7-201(2).] 490:7-201(b).”

SECTION 21. Section 490:9-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following definitions in other articles apply to this article:

“Applicant”. Section 490:5-102.

“Beneficiary”. Section 490:5-102.

“Broker”. Section 490:8-102.

“Certificated security”. Section 490:8-102.

“Check”. Section 490:3-104.

“Clearing corporation”. Section 490:8-102.

“Contract for sale”. Section 490:2-106.

“Control”. Section 490:7-106.

“Customer”. Section 490:4-104.

“Entitlement holder”. Section 490:8-102.

“Financial asset”. Section 490:8-102.

“Holder in due course”. Section 490:3-302.

“Issuer” (with respect to a letter of credit or letter-of-credit right). Section 490:5-102.

“Issuer” (with respect to a security). Section 490:8-201.

“Issuer” (with respect to documents of title). Section 490:7-102.

“Lease”. Section 490:2A-103.

“Lease agreement”. Section 490:2A-103.

“Lease contract”. Section 490:2A-103.

“Leasehold interest”. Section 490:2A-103.

“Lessee”. Section 490:2A-103.

“Lessee in ordinary course of business”. Section 490:2A-103.

“Lessor”. Section 490:2A-103.

“Lessor’s residual interest”. Section 490:2A-103.

“Letter of credit”. Section 490:5-102.

“Merchant”. Section 490:2-104.

“Negotiable instrument”. Section 490:3-104.

“Nominated person”. Section 490:5-102.

“Note”. Section 490:3-104.

“Proceeds of a letter of credit”. Section 490:5-114.

“Prove”. Section 490:3-103.

“Sale”. Section 490:2-106.

“Securities account”. Section 490:8-501.
 “Securities intermediary”. Section 490:8-102.
 “Security”. Section 490:8-102.
 “Security certificate”. Section 490:8-102.
 “Security entitlement”. Section 490:8-102.
 “Uncertificated security”. Section 490:8-102.”

SECTION 22. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) Value has been given;
- (2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) One of the following conditions is met:
 - (A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (B) The collateral is not a certificated security and is in the possession of the secured party under section 490:9-313 pursuant to the debtor’s security agreement;
 - (C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 490:8-301 pursuant to the debtor’s security agreement; or
 - (D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, or electronic documents, and the secured party has control under section 490:7-106, 490:9-104, 490:9-105, 490:9-106, or 490:9-107 pursuant to the debtor’s security agreement.”

SECTION 23. Section 490:9-207, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 490:7-106, 490:9-104, 490:9-105, 490:9-106, or 490:9-107:

- (1) May hold as additional security any proceeds, except money or funds, received from the collateral;
- (2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- (3) May create a security interest in the collateral.”

SECTION 24. Section 490:9-208, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within ten days after receiving an authenticated demand by the debtor:

- (1) A secured party having control of a deposit account under section 490:9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
- (2) A secured party having control of a deposit account under section 490:9-104(a)(3) shall:
 - (A) Pay the debtor the balance on deposit in the deposit account; or

- (B) Transfer the balance on deposit into a deposit account in the debtor's name;
- (3) A secured party, other than a buyer, having control of electronic chattel paper under section 490:9-105 shall:
 - (A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
 - (B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
- (4) A secured party having control of investment property under section 490:8-106(d)(2) or 490:9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~
- (5) A secured party having control of a letter-of-credit right under section 490:9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party~~[-]; and~~
- (6) A secured party having control of an electronic document shall:
 - (A) Give control of the electronic document to the debtor or its designated custodian;
 - (B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party."

SECTION 25. Section 490:9-301, Hawaii Revised Statutes, is amended to read as follows:

"§490:9-301 Law governing perfection and priority of security interests. Except as otherwise provided in sections 490:9-303 through 490:9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection,

the effect of perfection or nonperfection, and the priority of a security interest in collateral.

- (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.
- (3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
 - (A) Perfection of a security interest in the goods by filing a fixture filing;
 - (B) Perfection of a security interest in timber to be cut; and
 - (C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.
- (4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral."

SECTION 26. Section 490:9-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The filing of a financing statement is not necessary to perfect a security interest:

- (1) That is perfected under section 490:9-308(d), (e), (f), or (g);
- (2) That is perfected under section 490:9-309 when it attaches;
- (3) In property subject to a statute, regulation, or treaty described in section 490:9-311(a);
- (4) In goods in possession of a bailee which is perfected under section 490:9-312(d)(1) or (2);
- (5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under section 490:9-312(e), (f), or (g);
- (6) In collateral in the secured party's possession under section 490:9-313;
- (7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 490:9-313;
- (8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under section 490:9-314;
- (9) In proceeds which is perfected under section 490:9-315; or
- (10) That is perfected under section 490:9-316."

SECTION 27. Section 490:9-312, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement."

SECTION 28. Section 490:9-313, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 490:8-301."

SECTION 29. Section 490:9-314, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A security interest in investment property, deposit accounts, letter-of-credit rights, [or] electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 490:7-106, 490:9-104, 490:9-105, 490:9-106, or 490:9-107.

(b) A security interest in deposit accounts, electronic chattel paper, [or] letter-of-credit rights, or electronic documents is perfected by control under section 490:7-106, 490:9-104, 490:9-105, or 490:9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.”

SECTION 30. Section 490:9-317, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.”

SECTION 31. Section 490:9-317, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.”

SECTION 32. Section 490:9-338, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 490:9-516(b)(5) which is incorrect at the time the financing statement is filed:

- (1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and
- (2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.”

SECTION 33. Section 490:9-601, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A secured party in possession of collateral or control of collateral under section 490:7-106, 490:9-104, 490:9-105, 490:9-106, or 490:9-107 has the rights and duties provided in section 490:9-207.”

SECTION 34. Chapter 490, article 7, Hawaii Revised Statutes, is repealed.

SECTION 35. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 36. This Act shall take effect upon its approval; provided that:

- (1) Section 2 shall not take effect if article 1 of chapter 490, Hawaii Revised Statutes, as it read before the commencement of the regular session of 2004 is repealed; and
- (2) If the revised article 1 of the Uniform Commercial Code is not enacted before the approval of this Act, section 3 shall not take effect until the day after the effective date of an act to enact the revised article 1 of chapter 490, Hawaii Revised Statutes, that may be passed during the regular session of 2004.³

(Approved July 2, 2004.)

Notes

1. So in original.
2. "Shall" in Act 162.
3. Enacted as Act 162.

ACT 164

S.B. NO. 2210

A Bill for an Act Relating to Condominiums.

Be It Enacted by the Legislature of the State of Hawaii:

PART I.

SECTION 1. In 1961, Hawaii became the first state to pass a law enabling the creation of condominiums.

The 1961 "Horizontal Property Regime" law consisted of thirty-three sections covering a little more than three pages in the Revised Laws of Hawaii. Since that time, the law has been amended constantly. Presently, Hawaii's "Condominium Property Regime" law, chapter 514A, Hawaii Revised Statutes, consists of over one hundred sections taking up over fifty pages. As noted by the legislature in Act 213, Session Laws of Hawaii 2000, "[t]he present law is the result of numerous amendments enacted over the years made in a piecemeal fashion and with little regard to the law as a whole."

In 2000, the legislature recognized that "[Hawaii's] condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micro-manages condominium associations. The law is also overly regulatory, hinders development, and ignores technological changes and the present day development process." (Act 213, Session Laws of Hawaii 2000)

Consequently, the legislature directed the real estate commission (commission) to conduct a review of Hawaii's condominium property regimes law, make findings and recommendations for recodification of the law, and develop draft legislation consistent with its review and recommendations for submission to the legislature. This Act is the result of the commission's three-year effort to recodify Hawaii's condominium law. The commission's "Final Report to the Legislature, Recodification of Chapter 514A, Hawaii Revised Statutes (Condominium Property Regimes), in response to Act 213, Section 4 (SLH 2000)", dated December 31, 2003, should be used as an aid in understanding and interpreting this Act. The report may be viewed electronically at <http://www.hawaii.gov/dcca/reports> or on the commission's website at <http://www.hawaii.gov/hirec>.

The purpose of this part is to “update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law”, as directed by Act 213, Session Laws of Hawaii 2000.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CONDOMINIUMS
PART I. GENERAL PROVISIONS**

§ **-1 Short title.** This chapter may be cited as the Condominium Property Act.

§ **-2 Applicability.** Applicability of this chapter is governed by part II.

§ **-3 Definitions.** As used in this chapter and in the declaration and bylaws, unless specifically provided otherwise or required by the context:

“Affiliate of a developer” means a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.

“Association” means the unit owners’ association organized under section -102.

“Board” or “board of directors” means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.

“Commission” means the real estate commission of the State.

“Common elements” means:

- (1) All portions of a condominium other than the units; and
- (2) Any other interests in real estate for the benefit of unit owners that are subject to the declaration.

“Common expenses” means expenditures made by, or financial liabilities of, the association for operation of the property, and shall include any allocations to reserves.

“Common interest” means the percentage of undivided interest in the common elements appurtenant to each unit, as expressed in the declaration, and any specified percentage of the common interest means such percentage of the undivided interests in the aggregate.

“Common profits” means the balance of all income, rents, profits, and revenues from the common elements or other property owned by the association remaining after the deduction of the common expenses.

“Completion of construction” means the earliest of:

- (1) The issuance of a certificate of occupancy for the unit;
- (2) The date of completion for the project, or the phase of the project that includes the unit, as defined in section 507-43;
- (3) The recordation of the “as built” amendment to the declaration that includes the unit;
- (4) The issuance of the architect’s certificate of substantial completion for the project, or the phase of the project that includes the unit; or
- (5) The date the unit is completed so as to permit normal occupancy.

“Condominium” means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

“Condominium map” means a map or plan of the building or buildings containing the information required by section -33.

“Converted” or “conversion” means the submission of a structure to a condominium property regime more than twelve months after the completion of construction; provided that structures used as sales offices or models for a project and later submitted to a condominium property regime shall not be considered to be converted structures.

“Declaration” means any instrument, however denominated, that creates a condominium, including any amendments to the instrument.

“Developer” means a person who undertakes to develop a real estate condominium project, including a person who succeeds to the interest of the developer by acquiring a controlling interest in the developer or in the project.

“Development rights” means any right or combination of rights reserved by a developer in the declaration to:

- (1) Add real estate to a condominium;
- (2) Create units, common elements, or limited common elements within a condominium;
- (3) Subdivide units, combine units, or convert units into common elements;
- (4) Withdraw real estate from a condominium;
- (5) Merge projects or increments of a project; or
- (6) Otherwise alter the condominium.

“Limited common element” means a portion of the common elements designated by the declaration or by operation of section -35 for the exclusive use of one or more but fewer than all of the units.

“Majority” or “majority of unit owners” means the owners of units to which are appurtenant more than fifty per cent of the common interests. Any specified percentage of the unit owners means the owners of units to which are appurtenant such percentage of the common interest.

“Managing agent” means any person retained, as an independent contractor, for the purpose of managing the operation of the property.

“Master deed” or “master lease” means any deed or lease showing the extent of the interest of the person submitting the property to the condominium property regime.

“Material change” means any change that directly, substantially, and adversely affects the use or value of:

- (1) A purchaser’s unit or appurtenant limited common elements; or
- (2) Those amenities of the project available for the purchaser’s use.

“Material fact” means any fact, defect, or condition, past or present, that, to a reasonable person, would be expected to measurably affect the value of the project, unit, or property being offered or proposed to be offered for sale.

“Operation of the property” means the administration, fiscal management, and physical operation of the property, and includes the maintenance, repair, and replacement of, and the making of any additions and improvements to, the common elements.

“Person” means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

“Pertinent change” means, as determined by the commission, a change not previously disclosed in the most recent public report that renders the information contained in the public report or in any disclosure statement inaccurate, including, but not limited to:

- (1) The size, construction materials, location, or permitted use of a unit or its appurtenant limited common element;
- (2) The size, use, location, or construction materials of the common elements of the project; or
- (3) The common interest appurtenant to the unit.

A pertinent change does not necessarily constitute a material change.

“Project” means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the condominium property regime are created.

“Property” means the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances intended for use in connection with the condominium, which have been or are intended to be submitted to the regime established by this chapter. “Property” includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

“Record”, “recordation”, “recorded”, or “recording” means to record in the bureau of conveyances in accordance with chapter 502, or to register in the land court in accordance with chapter 501.

“Resident manager” means any person retained as an employee by the association to manage, on-site, the operation of the property.

“Time share unit” means the actual and promised accommodations, and related facilities, that are the subject of a time share plan as defined in chapter 514E.

“Unit” means a physical or spatial portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in the declaration or pursuant to section -35, with an exit to a public road or to a common element leading to a public road.

“Unit owner” means the person owning, or the persons owning jointly or in common, a unit and its appurtenant common interest; provided that to such extent and for such purposes as provided by recorded lease, including the exercise of voting rights, a lessee of a unit shall be deemed to be the unit owner.

§ -4 Separate titles and taxation. (a) Each unit that has been created, together with its appurtenant interest in the common elements, constitutes, for all purposes, a separate parcel of real estate.

(b) If there is any unit owner other than a developer, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements. The laws relating to home exemptions from state property taxes are applicable to individual units, which shall have the benefit of home exemption in those cases where the owner of a single-family dwelling would qualify. Property taxes assessed by the State or any county shall be assessed and collected on the individual units and not on the property as a whole. Without limitation of the foregoing, each unit and its appurtenant common interest shall be deemed to be a “parcel” and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.

(c) If there is no unit owner other than a developer, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

§ -5 Conformance with county land use laws. Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county, pursuant to section -6, to ensure the conformance of condominium property regimes to the purposes and provisions of county zoning and development ordinances and chapter 205. In the case of a property which includes one or more existing structures being converted to condominium status, the condominium property regime shall comply with section -32(a)(13) or -84(a).

§ **-6 Supplemental county rules governing a condominium property regime.** Whenever any county deems it proper, the county may adopt supplemental rules governing condominium property regimes established under this chapter in order to implement this program; provided that any of the supplemental rules adopted shall not conflict with this chapter or with any of the rules adopted by the commission to implement this chapter.

§ **-7 Construction against implicit repeal.** This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§ **-8 Severability.** If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

§ **-9 Obligation of good faith.** Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

§ **-10 Remedies to be liberally administered.** (a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Consequential, special, or punitive damages may not be awarded, however, except as specifically provided in this chapter or by other rule of law.

(b) Any deed, declaration, bylaw, or condominium map shall be liberally construed to facilitate the operation of the condominium property regime.

(c) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

PART II. APPLICABILITY

§ **-21 Applicability to new condominiums.** This chapter applies to all condominiums created within this State after the effective date of this chapter. The provisions of chapter 514A do not apply to condominiums created after the effective date of this chapter. Amendments to this chapter apply to all condominiums created after the effective date of this chapter or subjected to this chapter, regardless of when the amendment is adopted.

§ **-22 Applicability to preexisting condominiums.** Sections -4, -5, -46, -72, and part VI, and section -3 to the extent definitions are necessary in construing any of those provisions, apply to all condominiums created in this State before the effective date of this chapter; but those sections apply only with respect to events and circumstances occurring after the effective date of this chapter and do not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents of those condominiums.

For purposes of interpreting this chapter, the terms "condominium property regime" and "horizontal property regime" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "apartment owner" shall be deemed to correspond to the term "unit owner"; and the term "association of apartment owners" shall be deemed to correspond to the term "association".

§ -23 **Amendments to governing instruments.** (a) The declaration, bylaws, condominium map, or other constituent documents of any condominium created before the effective date of this chapter may be amended to achieve any result permitted by this chapter, regardless of what applicable law provided before the effective date of this chapter.

(b) An amendment to the declaration, bylaws, condominium map or other constituent documents authorized by this section shall be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this chapter. If an amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

PART III. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS (RESERVED)

PART IV. REGISTRATION AND ADMINISTRATION OF CONDOMINIUMS (RESERVED)

PART V. PROTECTION OF CONDOMINIUM PURCHASERS (RESERVED)

PART VI. MANAGEMENT OF CONDOMINIUMS

A. POWERS, DUTIES, AND OTHER GENERAL PROVISIONS

§ -101 **Applicability; exceptions.** (a) This part applies to all condominiums subject to this chapter, except as provided in subsection (b).

(b) If so provided in the declaration or bylaws, this part shall not apply to:

(1) Condominiums in which all units are restricted to nonresidential uses;
or

(2) Condominiums, not subject to any continuing development rights,
containing no more than five units;

provided that section -132 shall not be subject to these exceptions.

§ -102 **Association; organization and membership.** (a) The first meeting of the association shall be held not later than one hundred eighty days after recordation of the first unit conveyance; provided that forty per cent or more of the project has been sold and recorded. If forty per cent of the project is not sold and recorded at the end of one year after recordation of the first unit conveyance, an annual meeting shall be called if ten per cent of the unit owners so request.

(b) The membership of the association shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all former unit owners entitled to distributions of proceeds under section -47, or their heirs, successors, or assigns.

§ -103 **Association; registration.** (a) Each project or association having more than five units shall:

(1) Register with the commission through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on June 30 of each odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set

forth by the commission. Any project or association that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and be subject to initial registration requirements. Any new project or association shall register within thirty days of the association's first meeting. If the association has not held its first meeting and it is at least one year after the recordation of the purchase of the first unit in the project, the developer or developer's affiliate or the managing agent shall register on behalf of the association and shall comply with this section, except for the fidelity bond requirement for associations required by section -143(a)(3). The public information required to be submitted on any completed application form shall include but not be limited to evidence of and information on fidelity bond coverage, names and positions of the officers of the association, the name of the association's managing agent, if any, the street and the postal address of the condominium, and the name and current mailing address of a designated officer of the association where the officer can be contacted directly;

- (2) Pay a nonrefundable application fee and, upon approval, an initial registration fee, a reregistration fee upon reregistration and the condominium education trust fund fee, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (3) Register or reregister and pay the required fees by the due date. Failure to register or reregister or pay the required fees by the due date shall result in the assessment of a penalty equal to the amount of the registration or reregistration fee; and
- (4) Report promptly in writing to the commission any changes to the information contained on the registration or reregistration application or any other documents required by the commission. Failure to do so may result in termination of registration and subject the project or the association to initial registration requirements.

(b) The commission may reject or terminate any registration submitted by a project or an association that fails to comply with this section. Any association that fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers. The failure of an association to register, or rejection or termination of its registration, shall not impair the validity of any contract or act of the association nor prevent the association from defending any action or proceeding in any court in this State.

§ -104 Association; powers. (a) Except as provided in section -105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

- (1) Adopt and amend the declaration, bylaws, and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section -148;
- (3) Hire and discharge managing agents and other independent contractors, agents, and employees;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be "consumers";
- (5) Make contracts and incur liabilities;

- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners; provided further that if the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, this requirement shall not apply as to those additional areas; and provided further that this paragraph shall not apply to the purchase of a unit for a resident manager;
- (9) Subject to section -38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section -35(2) and (4), and for services provided to unit owners;
- (11) Impose charges and penalties, including late fees and interest, for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, for condominiums created after May 17, 1983, if the bylaws are silent, pursuant to a resolution adopted by the board and approved by sixty-seven per cent of all unit owners at an annual meeting of the association or by the written consent of sixty-seven per cent of all unit owners;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;
- (13) Provide for cumulative voting;
- (14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;
- (15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section -105(e) expressly so provides;
- (16) Exercise any other powers conferred by the declaration or bylaws;
- (17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;
- (18) Exercise any other powers necessary and proper for the governance and operation of the association; and
- (19) By regulation, subject to sections -146, -161, and -162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.

(b) If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may:

- (1) Exercise directly against the tenant the powers described in subsection (a)(11);
- (2) After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation, provided that a unit owner shall be responsible for the conduct of the owner's tenant and for any fines levied against the tenant or any legal fees incurred in enforcing the declaration, bylaws, or rules and regulations of the association against the tenant; and
- (3) Enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease, including eviction, or which the association could lawfully have exercised directly against the unit owner, or both.

(c) The rights granted under subsection (b)(3) may only be exercised if the tenant or unit owner fails to cure the violation within ten days after the association notifies the tenant and unit owner of that violation; provided that no notice shall be required when the breach by the tenant causes or threatens to cause damage to any person or constitutes a violation of section 521-51(1) or 521-51(6).

(d) Unless a lease otherwise provides, this section does not:

- (1) Affect rights that the unit owner has to enforce the lease or that the association has under other law; or
- (2) Permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations.

§ -105 Association; limitations on powers. (a) The declaration and bylaws may not impose limitations on the power of the association to deal with the developer which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(b) Unless otherwise permitted by the declaration, bylaws, or this chapter, an association may adopt rules and regulations that affect the use of or behavior in units that may be used for residential purposes only to:

- (1) Prevent any use of a unit which violates the declaration or bylaws;
- (2) Regulate any behavior in or occupancy of a unit which violates the declaration or bylaws or unreasonably interferes with the use and enjoyment of other units or the common elements by other unit owners; or
- (3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in condominiums or regularly purchase those mortgages.

Otherwise, the association may not regulate any use of or behavior in units by means of the rules and regulations.

(c) No association shall deduct and apply portions of common expense payments received from a unit owner to unpaid late fees, legal fees, fines, and interest (other than amounts remitted by a unit in payment of late fees, legal fees, fines, and interest) unless the board adopts and distributes to all owners a policy stating that:

- (1) Failure to pay late fees, legal fees, fines, and interest may result in the deduction of such late fees, legal fees, fines, and interest from future common expense payments, so long as a delinquency continues to exist; and

- (2) Late fees may be imposed against any future common expense payment that is less than the full amount owed due to the deduction of unpaid late fees, legal fees, fines, and interest from the payment.

(d) No unit owner who requests legal or other information from the association, the board, the managing agent, or their employees or agents, shall be charged for the reasonable cost of providing the information unless the association notifies the unit owner that it intends to charge the unit owner for the reasonable cost. The association shall notify the unit owner in writing at least ten days prior to incurring the reasonable cost of providing the information, except that no prior notice shall be required to assess the reasonable cost of providing information on delinquent assessments or in connection with proceedings to enforce the law or the association's governing documents.

After being notified of the reasonable cost of providing the information, the unit owner may withdraw the request, in writing. A unit owner who withdraws a request for information shall not be charged for the reasonable cost of providing the information.

(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.

§ -106 Board; powers and duties. (a) Except as provided in the declaration, the bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the board shall owe the association a fiduciary duty and exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 414D.

(b) The board may not act on behalf of the association to amend the declaration or bylaws (sections -32(a)(11) and -108(b)(7)), to remove the condominium from the provisions of this chapter (section -47), or to elect members of the board or determine the qualifications, powers and duties, or terms of office of board members (subsection (e)); provided that nothing in this subsection shall be construed to prohibit board members from voting proxies (section -123) to elect members of the board; and provided further that the board may fill vacancies in its membership to serve until the next annual or special association meeting.

(c) Within thirty days after the adoption of any proposed budget for the condominium, the board shall make available a copy of the budget to all the unit owners and shall notify each unit owner that the unit owner may request a copy of the budget.

(d) The declaration may provide for a period of developer control of the association, during which a developer, or persons designated by the developer, may appoint and remove the officers and members of the board. Regardless of the period

provided in the declaration, a period of developer control terminates no later than the earlier of:

- (1) Sixty days after conveyance of seventy-five per cent of the common interest appurtenant to units that may be created to unit owners other than a developer or affiliate of the developer;
- (2) Two years after the developer has ceased to offer units for sale in the ordinary course of business;
- (3) Two years after any right to add new units was last exercised; or
- (4) The day the developer, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

A developer may voluntarily surrender the right to appoint and remove officers and members of the board before termination of that period, but in that event the developer may require, for the duration of the period of developer control, that specified actions of the association or board, as described in a recorded instrument executed by the developer, be approved by the developer before they become effective.

(e) Not later than the termination of any period of developer control, the unit owners shall elect a board of at least three members; provided that condominiums created after May 17, 1984, with one hundred individual units, shall have an elected board of at least nine members unless at least sixty-seven per cent of all unit owners vote by mail ballot, or at a special or annual meeting, to reduce the number of directors; and provided further that condominiums with more than one hundred individual units where at least seventy-five per cent of the unit owners reside outside of the State may have an elected board of at least three members. The board shall elect the officers. Board members and officers shall take office upon election.

(f) At any regular or special meeting of the association, any member of the board may be removed and successors shall be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including any provision relating to cumulative voting, and, if removal and replacement is to occur at a special meeting, section -121(b).

§ -107 Board; limitations. (a) Members of the board shall be unit owners or co-owners, vendees under an agreement of sale, a trustee or beneficiary of a trust which owns a unit, an officer of any corporate owner—including a limited liability corporation—of a unit, or a representative of any other legal entity which owns a unit. The partners in a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be the owners of a unit for the purpose of serving on the board. There shall not be more than one representative on the board from any one unit.

(b) No resident manager or employee of a condominium shall serve on its board.

(c) An owner shall not act as a director of an association and an employee of the managing agent retained by the association.

(d) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses; provided that, with the approval of the board, directors may be reimbursed for actual expenditures incurred on behalf of the association. The minutes shall reflect in detail the items and amounts of the reimbursements.

(e) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

(f) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of subsection (d).

§ -108 Bylaws. (a) A true copy of the bylaws shall be recorded in the same manner as the declaration. No amendment to the bylaws is valid unless the amendment is duly recorded.

(b) The bylaws shall provide for at least the following:

- (1) The number of members of the board and the titles of the officers of the association;
- (2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies;
- (4) Designation of the powers the board or officers may delegate to other persons or to a managing agent;
- (5) Designation of the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- (6) The compensation, if any, of the directors;
- (7) Subject to subsection (d), a method for amending the bylaws; and
- (8) The percentage, consistent with this chapter, that is required to adopt decisions binding on all unit owners; provided that votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside units shall not be cast at any association meeting, regardless of their designation in the declaration.

(c) The bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

(d) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(e) The bylaws may be amended at any time by the vote or written consent of at least sixty-seven per cent of all unit owners. Any proposed bylaws together with the detailed rationale for the proposal may be submitted by the board or by a volunteer unit owners group. If submitted by that group, the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board. The vote or written consent, to be valid, must be obtained within three hundred sixty-five days after mailing for a proposed bylaw submitted by either the board or a volunteer unit owners group. If the bylaw is duly adopted, the board shall cause the bylaw amendment to be recorded. The volunteer unit owners group shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within three hundred sixty-five days after the original petition was submitted to the board.

This subsection shall not preclude any unit owner or volunteer unit owners group from proposing any bylaw amendment at any annual association meeting.

§ -109 Restatement of declaration and bylaws. (a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association at any time may restate the declaration or bylaws of the association to set forth all amendments thereto by a resolution adopted by the board.

(b) Subject to section -23, an association at any time may restate the declaration or bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority, by a resolution adopted by the board. The restated declaration or bylaws shall be as fully effective for all purposes as if adopted by a vote or written consent of the unit owners.

Any declaration or bylaws restated pursuant to this subsection shall:

- (1) Identify each portion so restated;
- (2) Contain a statement that those portions have been restated solely for purposes of information and convenience;
- (3) Identify the statute, ordinance, or rule implemented by the amendment; and
- (4) Contain a statement that, in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, or rule.

(c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated declaration or bylaws shall set forth all of the operative provisions of the declaration or bylaws, as amended, together with a statement that the restated declaration or bylaws correctly sets forth without change the corresponding provisions of the declaration or bylaws, as amended, and that the restated declaration or bylaws supersede the original declaration or bylaws and all prior amendments thereto.

(d) The restated declaration or bylaws must be recorded and, upon recordation, shall supersede the original declaration or bylaws and all prior amendments thereto. In the event of any conflict, the restated declaration or bylaws shall be subordinate to the original declaration or bylaws and all prior amendments thereto.

§ -110 Bylaws amendment permitted; mixed use property; representation on board. (a) The bylaws of an association may be amended to provide that the composition of the board reflect the proportionate number of units for a particular use, as set forth in the declaration. For example, an association may provide that for a nine-member board where two-thirds of the units are for residential use and one-third is for nonresidential use, sixty-six and two-thirds per cent of the nine-member board, or six members, shall be owners of residential use units and thirty-three and one-third per cent, or three members, shall be owners of nonresidential use units.

(b) Any proposed bylaw amendment to modify the composition of the board in accordance with subsection (a) may be initiated by:

- (1) A majority vote of the board; or
- (2) A submission of the proposed bylaw amendment to the board from a volunteer unit owners group accompanied by a petition from twenty-five per cent of the unit owners of record.

(c) Within thirty days of a decision by the board or receipt of a petition to initiate a bylaw amendment, the board shall mail a ballot with the proposed bylaw amendment to all of the unit owners of record. For purposes of this section only, the bylaws may initially be amended by a vote or written consent of the majority of the unit owners; and thereafter by at least sixty-seven per cent of all unit owners;

provided that each of the requirements set forth in this section shall be embodied in the bylaws.

(d) The bylaws, as amended pursuant to this section, shall be recorded.

(e) Election of the new board in accordance with an amendment adopted pursuant to this section shall be held at the next regular meeting of the association or at a meeting called in accordance with section -121(b) for this purpose.

(f) As permitted in the declaration or bylaws, the vote of a nonresidential unit owner shall be cast and counted only for the nonresidential seats available on the board and the vote of a residential unit owner shall be cast and counted only for the residential seats available on the board.

(g) No petition for a bylaw amendment pursuant to subsection (b)(2) to modify the composition of the board shall be distributed to the unit owners within one year of the distribution of a prior petition to modify the composition of the board pursuant to subsection (b)(2).

(h) This section shall not preclude the removal and replacement of any one or more members of the board pursuant to section -106(f). Any removal and replacement shall not affect the proportionate composition of the board as prescribed in the bylaws as amended pursuant to this section.

§ -111 Judicial power to excuse compliance with requirements of declaration or bylaws. (a) The circuit court of the judicial circuit in which a condominium is located may excuse compliance with any of the following provisions in a declaration or bylaws if it finds that the provision unreasonably interferes with the association's ability to manage the common property, administer the condominium property regime, or carry out any other function set forth in the declaration or bylaws, and that compliance is not necessary to protect the legitimate interests of the members or lenders holding security interests:

- (1) A provision limiting the amount of any assessment that can be levied against individually owned property;
- (2) A provision requiring that an amendment to the declaration or bylaws be approved by lenders;
- (3) A provision requiring approval of at least sixty-seven per cent of the common interest to adopt an amendment pursuant to section -32(a)(11) or section -108(e); provided that the amendment does not:
 - (A) Prohibit or materially restrict the use or occupancy of, or behavior within, individually owned units;
 - (B) Change the basis for allocating voting rights or assessments among unit owners; or
 - (C) Apply to less than all of the unit owners;
- (4) A requirement that an amendment to the declaration be signed by unit owners; or
- (5) A quorum requirement for meetings of unit owners.

(b) The board, on behalf of the association, shall by certified mail provide all unit owners with notice of the date, time, and place of any court hearing to be held pursuant to this section.

§ -112 Condominium community mutual obligations. (a) All unit owners, tenants of owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to this chapter are subject to this chapter and to the declaration and bylaws of the association adopted pursuant to this chapter.

(b) All agreements, decisions, and determinations lawfully made by the association in accordance with the voting percentages established in this chapter, the declaration, or the bylaws are binding on all unit owners.

(c) Each unit owner, tenants and employees of an owner, and other persons using the property shall comply strictly with the covenants, conditions, and restrictions set forth in the declaration, the bylaws, and the house rules adopted pursuant thereto. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the managing agent, resident manager, or board on behalf of the association or, in a proper case, by an aggrieved unit owner.

B. GOVERNANCE – ELECTIONS AND MEETINGS

§ -121 Association meetings. (a) A meeting of the association shall be held at least once each year.

(b) Special meetings of the association may be called by the president, a majority of the board, or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the unit owners as shown in the association's record of ownership; provided that if the secretary or managing agent fails to send out the notices for the special meeting within fourteen days of receipt of the petition, the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices and proxies for the special meeting in accordance with the requirements of the bylaws and of this part.

(c) Not less than fourteen days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be:

- (1) Hand-delivered;
- (2) Sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner; or
- (3) At the option of the unit owner, expressed in writing, by electronic mail to the electronic mailing address designated in writing by the unit owner.

The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature and rationale of any proposed amendment to the declaration or bylaws, and any proposal to remove a member of the board; provided that this subsection shall not preclude any unit owner from proposing an amendment to the declaration or bylaws or to remove a member of the board at any annual association meeting.

(d) All association meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. If so provided in the declaration or bylaws, meetings may be conducted by any means that allow participation by all unit owners in any deliberation or discussion.

(e) All association meetings shall be held at the address of the condominium or elsewhere within the State as determined by the board; provided that in the event of a natural disaster, such as a hurricane, an association meeting may be held outside the State.

§ -122 Association meetings; minutes. (a) Minutes of meetings of the association shall be approved at the next succeeding regular meeting or by the board, within sixty days after the meeting, if authorized by the owners at an annual meeting. If approved by the board, owners shall be given a copy of the approved minutes or notified of the availability of the minutes within thirty days after approval.

(b) Minutes of all meetings of the association shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting.

(c) An owner shall be allowed to offer corrections to the minutes at an association meeting.

§ -123 Association meetings; voting; proxies. (a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made by any of the other owners of the unit to the person presiding over the meeting before the polls are closed.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A unit owner may vote by mail or electronic transmission through a duly executed directed proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice.

(c) No votes allocated to a unit owned by the association may be cast for the election or reelection of directors.

(d) A proxy, to be valid, shall:

- (1) Be delivered to the secretary of the association or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;
- (2) Contain at least the name of the association, the date of the meeting of the association, the printed names and signatures of the persons giving the proxy, the unit numbers for which the proxy is given, the names of persons to whom the proxy is given, and the date that the proxy is given; and
- (3) If it is a standard proxy form authorized by the association, contain boxes wherein the owner has indicated that the proxy is given:
 - (A) For quorum purposes only;
 - (B) To the individual whose name is printed on a line next to this box;
 - (C) To the board as a whole and that the vote is to be made on the basis of the preference of the majority of the directors present at the meeting; or
 - (D) To those directors present at the meeting with the vote to be shared with each director receiving an equal percentage.

The proxy form shall also contain a box wherein the owner may indicate that the owner wishes to obtain a copy of the annual audit report required by section -150.

(e) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the unit owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(f) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunica-

tion, or other reproduction shall be a complete reproduction of the entire original proxy.

(g) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering a unit or under an agreement of sale affecting a unit.

(h) With respect to the use of association funds to distribute proxies:

- (1) Any board that intends to use association funds to distribute proxies, including the standard proxy form referred to in subsection (d)(3), shall first post notice of its intent to distribute proxies in prominent locations within the project at least twenty-one days before its distribution of proxies. If the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:
 - (A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
 - (B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement, which shall be limited to black text on white paper, shall not exceed one single-sided 8½" × 11" page, indicating the owner's qualifications to serve on the board or reasons for wanting to receive proxies; and

- (2) A board or member of the board may use association funds to solicit proxies as part of the distribution of proxies. If a member of the board, as an individual, seeks to solicit proxies using association funds, the board member shall proceed as a unit owner under paragraph (1).

(i) No managing agent or resident manager, or their employees, shall solicit, for use by the managing agent or resident manager, any proxies from any unit owner of the association that retains the managing agent or employs the resident manager, nor shall the managing agent or resident manager cast any proxy vote at any association meeting except for the purpose of establishing a quorum.

(j) No board shall adopt any rule prohibiting the solicitation of proxies or distribution of materials relating to association matters on the common elements by unit owners; provided that a board may adopt rules regulating reasonable time, place, and manner of the solicitations or distributions, or both.

§ -124 Association meetings; purchaser's right to vote. The purchaser of a unit pursuant to a recorded agreement of sale shall have all the rights of a unit owner, including the right to vote; provided that the seller may retain the right to vote on matters substantially affecting the seller's security interest in the unit, including but not limited to, the right to vote on:

- (1) Any partition of all or part of the project;
- (2) The nature and amount of any insurance covering the project and the disposition of any proceeds thereof;
- (3) The manner in which any condemnation of the project shall be defended or settled and the disposition of any award or settlement in connection therewith;
- (4) The payment of any amount in excess of insurance or condemnation proceeds;
- (5) The construction of any additions or improvements, and any substantial repair or rebuilding of any portion of the project;
- (6) The special assessment of any expenses;
- (7) The acquisition of any unit in the project;

- (8) Any amendment to the declaration or bylaws;
- (9) Any removal of the project from the provisions of this chapter; and
- (10) Any other matter that would substantially affect the security interest of the seller.

§ -125 Board meetings. (a) All meetings of the board, other than executive sessions, shall be open to all members of the association, and association members who are not on the board may participate in any deliberation or discussion, other than executive sessions, unless a majority of a quorum of the board votes otherwise.

(b) The board, with the approval of a majority of a quorum of its members, may adjourn a meeting and reconvene in executive session to discuss and vote upon matters:

- (1) Concerning personnel;
- (2) Concerning litigation in which the association is or may become involved;
- (3) Necessary to protect the attorney-client privilege of the association; or
- (4) Necessary to protect the interests of the association while negotiating contracts, leases, and other commercial transactions.

The general nature of any business to be considered in executive session shall first be announced in open session.

(c) All board meetings shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised. Unless otherwise provided in the declaration or bylaws, a board may permit any meeting to be conducted by any means of communication through which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. If permitted by the board, any unit owner may participate in a meeting conducted by a means of communication through which all participants may simultaneously hear each other during the meeting, provided that the board may require that the unit owner pay for the costs associated with the participation.

(d) The board shall meet at least once a year. Notice of all board meetings shall be posted by the managing agent, resident manager, or a member of the board, in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board.

(e) A director shall not vote by proxy at board meetings.

(f) A director shall not vote at any board meeting on any issue in which the director has a conflict of interest. A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

"Conflict of interest", as used in this subsection, means an issue in which a director has a direct personal or pecuniary interest not common to other members of the association.

§ -126 Board meetings; minutes. (a) Minutes of meetings of the board shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the board shall be approved no later than the second succeeding regular meeting.

(c) Minutes of all meetings of the board shall be available within seven calendar days after approval, and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting; provided that the minutes of

any executive session may be withheld if their publication would defeat the lawful purpose of the executive session.

C. OPERATIONS

§ **-131 Operation of the property.** The operation of the property shall be governed by this chapter and the declaration and bylaws.

§ **-132 Managing agents.** (a) Every managing agent shall:

- (1) Be a:
 - (A) Licensed real estate broker in compliance with chapter 467 and the rules of the commission. With respect to any requirement for a corporate managing agent in any declaration or bylaws recorded before the effective date of this chapter, any managing agent organized as a limited liability company shall be deemed to be organized as a corporation for the purposes of this paragraph, unless the declaration or bylaws are expressly amended after the effective date of this chapter to require that the managing agent be organized as a corporation and not as a limited liability company; or
 - (B) Corporation authorized to do business under article 8 of chapter 412;
- (2) Register with the commission prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. The registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed reregistration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted with any application shall include the name, business address, phone number, and names of associations managed;
- (3) Obtain and keep current a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of units of the association managed by the managing agent; provided that the amount of the fidelity bond shall not be less than \$20,000 nor greater than \$500,000. Upon request by the commission, the managing agent shall provide evidence of a current fidelity bond or a certification statement from an insurance company authorized by the insurance division of the department of commerce and consumer affairs certifying that the fidelity bond is in effect and meets the requirements of this section and the rules adopted by the commission. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The fidelity bond shall protect the managing agent against the loss of any association's moneys, securities, or other properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide evidence of the fidelity

bond coverage in a timely manner to the commission, shall result in nonregistration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission;

- (4) Act promptly and diligently to recover from the fidelity bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association, and apply the fidelity bond proceeds, if any, to reduce the association's loss. If more than one association suffers a loss, the managing agent shall divide the proceeds among the associations in proportion to each association's loss. An association may request a court order requiring the managing agent to act promptly and diligently to recover from the fidelity bond. If an association cannot recover its loss from the fidelity bond proceeds of the managing agent, the association may recover by court order from the real estate recovery fund established under section 467-16, provided that:
 - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
 - (B) The managing agent is a licensed real estate broker; and
 - (C) The association fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission;
- (5) Pay a nonrefundable application fee and, upon approval, an initial registration fee, and subsequently pay a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto; and
- (6) Report immediately in writing to the commission any changes to the information contained on the registration application or any other documents provided for registration. Failure to do so may result in termination of registration and subject the managing agent to initial registration requirements.

(b) The commission may deny any registration or reregistration application or terminate a registration without hearing if the fidelity bond and supporting documents fail to meet the requirements of this chapter and the rules adopted pursuant thereto.

(c) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent.

(d) The registration requirements of this section shall not apply to active real estate brokers in compliance with and licensed under chapter 467.

(e) If a managing agent receives a request from the commission to distribute any commission-generated information, printed material, or documents to the association, its board, or unit owners, the managing agent shall make the distribution within a reasonable period of time after receiving the request. The requirements of this subsection apply to all managing agents, including unregistered managing agents.

§ -133 Association employees; background check; prohibition. (a) The board, managing agent, or resident manager, upon the written authorization of an applicant for employment as a security guard or resident manager or for a position that would allow the employee access to the keys of or entry into the units in the condominium or access to association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the board, managing agent, or resident manager shall first certify that the signature on the authorization is authentic and that the person is

an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as an association employee with access to association funds or the keys of or entry into the units in the condominium, and the judgment of conviction has not been vacated.

For purposes of this section, the criminal history disclosure made by the applicant may be verified by the board, managing agent, resident manager, or other responsible party, if so directed by the board, managing agent, or resident manager, by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information, which shall include, but not be limited to, the applicant's name, social security number, date of birth, and gender. This information shall be used only for the purpose of conducting the criminal history record check authorized by this section. Failure of an association, managing agent, or resident manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against an association, managing agent, or resident manager for acts and omissions of the employee hired.

(b) An association's employees shall not engage in selling or renting units in the condominium in which they are employed, except association-owned units, unless such activity is approved by sixty-seven per cent of the unit owners.

§ -134 Management and contracts; developer, managing agent, and association. (a) Any developer or affiliate of the developer or a managing agent, who manages the operation of the property from the date of recordation of the first unit conveyance until the organization of the association, shall comply with the requirements of sections -72, -103, and -149.

(b) The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including, but not limited to, financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract. Prior to the organization of the association, any unit owner may request to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.

§ -135 Termination of contracts and leases of developer. (a) If entered into before the board elected by the unit owners pursuant to section -106(e) takes office:

- (1) Any management contract, employment contract, or lease of recreational or parking areas or facilities;
- (2) Any other contract or lease between the association and a developer or an affiliate of a developer; or
- (3) Any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing;

may be terminated without penalty by the association within a period of one hundred eighty days after the board elected by the unit owners pursuant to section -106(e) takes office, upon not less than ninety days notice to the other party.

(b) This section does not apply to:

- (1) Any lease or other agreement the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that

lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section; or

- (2) A proprietary lease.

§ -136 Transfer of developer rights. (a) A developer right created or reserved under this chapter may be transferred only by a recorded instrument evidencing the transfer. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any developer right, the liability of a transferor developer is as follows:

- (1) A transferor is not relieved of any obligation or liability arising before the transfer, and remains liable for warranty obligations imposed upon the transferor by this chapter, if any. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor;
- (2) If a successor to any developer right is an affiliate of a developer, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium;
- (3) If a transferor retains any developer rights, but transfers other developer rights to a successor who is not an affiliate of the developer, the transferor is liable for any obligations or liabilities imposed on a developer by this chapter or by the declaration relating to the retained developer rights and arising after the transfer; and
- (4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a developer right by a successor developer who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of any units owned by a developer or real estate in a condominium subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon request, succeeds to all developer rights related to that property held by that developer. The judgment or instrument conveying title must provide for the transfer of only the developer rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of all interests in a condominium owned by a developer:

- (1) The developer ceases to have any developer rights; and
- (2) The period of developer control under section -106(d) terminates unless the judgment or instrument conveying title provides for transfer of all developer rights held by that developer to a successor developer.

(e) The liabilities and obligations of a person who succeeds to developer rights are as follows:

- (1) A successor to any developer right who is an affiliate of a developer is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;
- (2) A successor to any developer right, other than a successor described in paragraph (3) or (4) or a successor who is an affiliate of a developer, is subject to the obligations and liabilities imposed by this chapter or the declaration:

- (A) On a developer which relate to the successor's exercise or non-exercise of developer rights; or
- (B) On the transferor, other than:
 - (i) Misrepresentations by any previous developer;
 - (ii) Warranty obligations on improvements made by any previous developer, or made before the condominium was created;
 - (iii) Breach of any fiduciary obligation by any previous developer or the developer's appointees to the board; or
 - (iv) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;
- (3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, and who may not exercise any other developer right, is not subject to any liability or obligation as a developer, except the obligation to provide a public report, any liability arising as a result thereof, and the obligations under part IV; and
- (4) A successor to all developer rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all developer rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the board in accordance with section -106(d) for the duration of any period of developer control, and any attempted exercise of those rights is void. So long as a successor developer may not exercise developer rights under this subsection, the successor developer is not subject to any liability or obligation as a developer other than liability for the developer's acts and omissions under section -106(d).
- (f) Nothing in this section subjects any successor to a developer right to any claims against or other obligations of a transferor developer, other than claims and obligations arising under this chapter or the declaration.

§ -137 Upkeep of condominium. (a) Except to the extent provided by the declaration or bylaws, the association is responsible for the operation of the property, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, during reasonable hours, access through the owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association, if it is responsible, is liable for the prompt repair thereof; provided that the association shall not be responsible to pay the costs of removing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.

(b) The association shall have the irrevocable right, to be exercised by the board, to have access to each unit at any time as may be necessary for making emergency repairs to prevent damage to the common elements or to another unit or units.

§ -138 Upkeep of condominium; high-risk components. (a) The board, after notice to all unit owners and an opportunity for owner comment, may

determine that certain portions of the units, or certain objects or appliances within the units such as washing machine hoses and water heaters, pose a particular risk of damage to other units or the common elements if they are not properly inspected, maintained, repaired, or replaced by owners. Those items determined by the board to pose a particular risk are "high-risk components" for the purposes of this section.

(b) With regard to items designated as high-risk components, the board may require any or all of the following:

- (1) Inspection:
 - (A) At specified intervals; or
 - (B) Upon replacement or repair by the association or by inspectors designated by the association;
- (2) Replacement or repair at specified intervals whether or not the component is deteriorated or defective; and
- (3) Replacement or repair:
 - (A) Meeting particular standards or specifications established by the board;
 - (B) Including additional components or installations specified by the board; or
 - (C) Using contractors with specific licensing, training, or certification approved by the board.

(c) The imposition of requirements by the board under subsection (b) shall not relieve unit owners of obligations regarding high-risk components as set forth in the declaration or bylaws including, without limitation, the obligation to maintain, repair, and replace the components.

(d) If a unit owner fails to follow requirements imposed by the board pursuant to this section, the association, after reasonable notice, shall enter the unit to perform the requirements with regard to such high-risk components at the sole cost and expense of the unit owner, which costs and expenses shall be a lien on the unit as provided in section -146. Nothing in this section shall be deemed to limit the remedies of the association for damages, or injunctive relief, or both.

§ -139 Upkeep of condominium; disposition of unclaimed possessions.

(a) When personalty in or on the common elements of a project has been abandoned, the board may sell the personalty in a commercially reasonable manner, store the personalty at the expense of its owner, donate the personalty to a charitable organization, or otherwise dispose of the personalty in its sole discretion; provided that no sale, storage, or donation shall occur until sixty days after the board complies with the following:

- (1) The board notifies the owner in writing of:
 - (A) The identity and location of the personalty; and
 - (B) The board's intent to so sell, store, donate, or dispose of the personalty.

Notification shall be by certified mail, return receipt requested, to the owner's address as shown by the records of the association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or

- (2) If the identity or address of the owner is unknown, the board shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personalty is located.

(b) The proceeds of any sale or disposition of personalty under subsection (a), after deduction of any accrued costs of mailing, advertising, storage, and sale,

shall be held for the owner for thirty days. Any proceeds not claimed within this period shall become the property of the association.

§ -140 Additions to and alterations of condominium. (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.

(b) Subject to the provisions of the declaration, no unit owner may make or allow any material addition or alteration, or excavate an additional basement or cellar, without first obtaining the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval. The declaration may limit the board's ability to approve or condition a proposed addition or alteration; provided that the board shall always have the right to disapprove a proposed addition or alteration that the board reasonably determines could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.

(c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, the installation of solar energy devices, or additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold such approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws.

"Nonmaterial additions and alterations", as used in this subsection, means an addition to or alteration of the common elements or a unit that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

"Solar energy device", for purposes of this subsection, means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and be ready to be made operational in order to qualify as a "solar energy device".

(d) Notwithstanding any other provisions to the contrary in this chapter or in any declaration or bylaws:

(1) Regarding the installment of telecommunications equipment:

- (A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and
- (B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a

- material change in the plans of the project filed in accordance with sections -33 and -34; provided that no such installation shall directly affect any nonconsenting unit owner; and
- (2) Regarding the abandonment of telecommunications equipment:
 - (A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and
 - (B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections -33 and -34.

As used in this subsection:

“Directly affect” means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect a unit owner in a manner not common to the unit owners as a whole.

“Television signal distribution” and “telecommunications equipment” shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology.

§ -141 Tort and contract liability; tolling of limitation period. (a) A unit owner is not liable, solely by reason of being a unit owner, for any injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the developer is liable for that developer’s torts in connection with any part of the condominium that that developer has the responsibility to maintain.

(b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of developer control and the association gives the developer reasonable notice of and an opportunity to defend against the action, the developer who then controlled the association is liable to the association or to any unit owner for:

- (1) All tort losses not covered by insurance suffered by the association or that unit owner; and
- (2) All costs that the association would not have incurred but for a breach of contract or other wrongful act or omission, as the same may be established through adjudication.

Whenever the developer is liable to the association under this section, the developer is also liable for all expenses of litigation, including reasonable attorneys’ fees, incurred by the association.

(c) Any statute of limitation affecting the association’s right of action against a developer under this chapter is tolled until the period of developer control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the unit owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section -147.

§ -142 Aging in place; limitation on liability. (a) The association, its directors, unit owners, and their agents and tenants, acting through the board, shall

not have any legal responsibility or legal liability, with respect to any actions and recommendations the board takes on any report, observation, or complaint made, or with respect to any recommendation or referral given, which relates to an elderly unit owner who, may require services and assistance to maintain independent living in the unit in which the elderly unit owner resides so that the elderly unit owner will not pose any harm to self or to others, and will not be disruptive to the condominium community because of the following problems of aging and aging in place:

- (1) The inability to clean and maintain an independent unit;
- (2) Mental confusion;
- (3) Abusing others;
- (4) Inability to care for oneself;
- (5) Inability to arrange for home care;
- (6) Loneliness and neglect; or
- (7) Inappropriate requests of others for assistance.

For purposes of this section, "elderly" means age sixty-two and older.

(b) Upon a report, observation, or complaint relating to an elderly unit owner aging or aging in place which notes a problem similar in nature to the problems enumerated in subsection (a), the board, in good faith, and without legal responsibility or liability, may request a functional assessment regarding the condition of an elderly unit owner as well as recommendations for the services which the elderly unit owner may require to maintain a level of independence that enables the owner to avoid any harm to self or to others, and to avoid disruption to the condominium community. The board, upon request or unilaterally, and without legal responsibility or liability, may recommend available services to an elderly unit owner which might enable the elderly unit owner to maintain a level of independent living with assistance, enabling in turn, the elderly unit owner to avoid any harm to self or others, and to avoid disruption to the condominium community.

(c) There is no affirmative duty on the part of the association, its board, the unit owners, or their agents or tenants to request or require an assessment and recommendations with respect to an elderly unit owner when the elderly unit owner may be experiencing the problems related to aging and aging in place enumerated in subsection (a). The association, its board, unit owners, and their agents and tenants shall not be legally responsible or liable for not requesting or declining to request a functional assessment of, and recommendations for, an elderly unit owner regarding problems relating to aging and aging in place.

(d) If an elderly unit owner ignores or rejects a request for or the results from an assessment and recommendations, the association, with no liability for cross-claims or counterclaims, may file appropriate information, pleadings, notices, or the like, with appropriate agencies or courts to seek an appropriate resolution for the condominium community and for the elderly unit owner.

(e) Costs and fees for assessments, recommendations, and actions contemplated in this section shall be as set forth in the declaration or bylaws.

(f) This section shall not be applicable to any condominium that seeks to become licensed as an assisted living facility pursuant to chapter 90, title 11, Hawaii Administrative Rules, as amended.

§ -143 Insurance. (a) Unless otherwise provided in the declaration or bylaws, and to the extent reasonably available, the association shall purchase and at all times maintain the following:

- (1) Property insurance:
 - (A) On the common elements;
 - (B) Providing coverage for special form causes of loss; and
 - (C) In a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including

coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date;

- (2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the board, insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer shall be included as an additional insured in its capacity as a unit owner, managing agent or resident manager, board member, or officer. The unit owners shall be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.
- (3) A fidelity bond, as follows:
 - (A) An association with more than five dwelling units shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, in an amount equal to \$500 multiplied by the number of units; provided that the amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$200,000;
 - (B) All management companies that are responsible for the funds held or administered by the association shall be covered by a fidelity bond as provided in section 132(a)(3). The association shall have standing to make a loss claim against the bond of the managing agent as a party covered under the bond; and
 - (C) The board shall obtain directors and officers liability coverage at a level deemed reasonable by the board, if not otherwise established by the declaration or bylaws. Directors and officers liability coverage shall extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but shall exclude actions for which the directors are not entitled to indemnification under chapter 414D or the declaration and bylaws.

(b) If a building contains attached units, the insurance maintained under subsection (a)(1), to the extent reasonably available, shall include the units, the limited common elements, except as otherwise determined by the board, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected.

For the purposes of this section, "improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners.

(c) If a project contains detached units, then notwithstanding the requirement that associations obtain the requisite coverage, the insurance to be maintained under subsection (a)(1) may be obtained separately for each unit by the unit owners; provided that the requirements of subsection (a)(1) shall be met; and provided further that evidence of such insurance coverage shall be delivered annually to the association. In such event, the association shall be named as an additional insured.

(d) The board, in the case of a claim for damage to a unit or the common elements, may:

- (1) Pay the deductible amount as a common expense;
- (2) After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or
- (3) Require the unit owners of the units affected to pay the deductible amount.

(e) The declaration or bylaws may require the association to carry any other insurance, including workers' compensation, employment practices, environmental hazards, and equipment breakdown, that the board considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.

(f) Insurance policies carried pursuant to subsections (a) and (b) shall include each of the following provisions:

- (1) Each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association;
- (2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board; and
- (3) The unit owner waives the unit owner's right to subrogation under the association policy against the association and the board.

(g) If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy shall be the primary insurance.

(h) Any loss covered by the property policy under subsection (a)(1) shall be adjusted by and with the association. The insurance proceeds for that loss shall be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged common elements, the bare walls, ceilings, and floors of the units, and then to any improvements and betterments the association may insure. Unit owners shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the association has been terminated as trustee.

(i) The board, under the declaration or bylaws, may require unit owners to obtain reasonable levels of insurance covering their personal liability and compensatory but not consequential damages to another unit caused by the negligence of the owner or the owner's guests, tenants, or invitees, or regardless of any negligence originating from the unit. The personal liability of a unit owner shall include the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

If the unit owner does not purchase or produce evidence of insurance requested by the board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the unit owner. In no event is the board liable to any person either with regard to its decision not to purchase the insurance, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

(j) Contractors and vendors, except public utilities doing business with an association, shall provide certificates of insurance naming the association, its board, and its managing agent as additional insured parties.

(k) The provisions of this section may be varied or waived in the case of a condominium community in which all units are restricted to nonresidential use.

(l) Any insurer defending a liability claim against an association shall notify the association of the terms of the settlement no less than ten days before settling the claim. The association may not veto the settlement unless otherwise provided by contract or statute.

§ -144 Association fiscal matters; assessments for common expenses.

(a) Except as provided in section -41, until the association makes a common expense assessment, the developer shall pay all common expenses. After an assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted and distributed or made available to unit owners at least annually by the board.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses shall be assessed against all the units in accordance with the allocations under section -41. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association, provided that the rate shall not exceed eighteen per cent per year.

(c) Assessments to pay a judgment against the association under section -147(a) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense allocations under section -41.

(d) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.

(e) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(f) In the case of a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantor or grantee is, however, entitled to a statement from the board, either directly or through its managing agent or resident manager, setting forth the amount of the unpaid assessments against the grantor, and except as to the amount of subsequently dishonored checks mentioned in such statement as having been received within the thirty-day period immediately preceding the date of such statement, the grantee is not liable for, nor is the unit conveyed subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

(g) No unit owner may exempt the unit owner from liability for the unit owner's contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit owner's unit. Subject to such terms and conditions as may be specified in the bylaws, any unit owner, by conveying the unit owner's unit and common interest to the board on behalf of all other unit owners, may exempt the unit owner's self from common expenses thereafter accruing.

(h) The board, either directly or through its managing agent or resident manager, shall notify the unit owners in writing of maintenance fee increases at least thirty days prior to such an increase.

§ -145 Association fiscal matters; collection of unpaid assessments from tenants. (a) If the owner of a unit rents or leases the unit and is in default for thirty days or more in the payment of the unit's share of the common expenses, the board, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant's rent due each month. The tenant's payment under this section shall discharge that amount of payment from the tenant's rent obligation, and any contractual provision to the contrary shall be void as a matter of law.

(b) Before taking any action under this section, the board shall give to the delinquent unit owner written notice of its intent to collect the rent owed. The notice shall:

- (1) Be sent both by first-class and certified mail;
- (2) Set forth the exact amount the association claims is due and owing by the unit owner; and
- (3) Indicate the intent of the board to collect such amount from the rent, along with any other amounts that become due and remain unpaid.

(c) The unit owner shall not take any retaliatory action against the tenant for payments made under this section.

(d) The payment of any portion of the unit's share of common expenses by the tenant pursuant to a written demand by the board is a complete defense, to the extent of the amount demanded and paid by the tenant, in an action for nonpayment of rent brought by the unit owner against a tenant.

(e) The board may not demand payment from the tenant pursuant to this section if:

- (1) A commissioner or receiver has been appointed to take charge of the premises pending a mortgage foreclosure;
- (2) A mortgagee is in possession pending a mortgage foreclosure; or
- (3) The tenant is served with a court order directing payment to a third party.

(f) In the event of any conflict between this section and any provision of chapter 521, the conflict shall be resolved in favor of this section; provided that if the tenant is entitled to an offset of rent under chapter 521, the tenant may deduct the offset from the amount due to the association, up to the limits stated in chapter 521. Nothing herein precludes the unit owner or tenant from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed.

(g) Before the board may take the actions permitted under subsection (a), the board shall adopt a written policy providing for the actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.

§ -146 Association fiscal matters; lien for assessments. (a) All sums assessed by the association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the unit; and
- (2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in such mortgages.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association, in like manner as a mortgage of real property. In

any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The managing agent or board, acting on behalf of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association chargeable to the unit which became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure pursuant to section 667-5; or
- (4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) No unit owner shall withhold any assessment claimed by the association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;
- (5) That a unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the unit owner immediately pays the assessment in full and keeps assessments current; and
- (6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) A unit owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under section -162; provided that a unit owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association assessments within thirty days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association which are not owed.

(e) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board to, after sixty days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

(f) Before the board or managing agent may take the actions permitted under subsection (e), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.

(g) Subject to this subsection, and subsections (h) and (i), the board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a person who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that:

- (1) A purchaser who holds a mortgage on a delinquent unit that was recorded prior to the filing of a notice of lien by the association and who acquires the delinquent unit through a judicial or nonjudicial foreclosure proceeding, including purchasing the delinquent unit at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and
- (2) A person who subsequently purchases the delinquent unit from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; and provided further that the mortgagee or subsequent purchaser may require the association to provide at no charge a notice of the association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that

were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure. In no event shall the amount of the special assessment exceed the sum of \$1,800.

(i) For purposes of subsections (g) and (h), the following definitions shall apply, unless the context requires otherwise:

“Completion” means:

- (1) In a nonjudicial power of sale foreclosure, when the affidavit required under section 667-5 is filed; and
- (2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

“Regular monthly common assessments” does not include:

- (1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section -148;
- (2) Late charges, fines, or penalties;
- (3) Interest assessed by the association;
- (4) Any lien arising out of the assessment; or
- (5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys’ fees and court costs.

(j) The cost of a release of any lien filed pursuant to this section shall be paid by the party requesting the release.

§ -147 Association fiscal matters; other liens affecting the condominium. (a) Except as provided in subsection (b), a judgment for money against the association, if recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against the common expense funds of the association. No other property of a unit owner is subject to the claims of creditors of the association.

(b) Whether perfected before or after the creation of the condominium, if a lien, other than a mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium), becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner’s unit, and the lienholder, upon receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner’s common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner’s unit for any portion of the common expenses incurred in connection with that lien.

(c) A judgment against the association shall be indexed in the name of the condominium and the association and, when so indexed, is notice of the lien against the units.

§ -148 Association fiscal matters; budgets and reserves. (a) The budget required under section -144(a) shall include at least the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total replacement reserves of the association as of the date of the budget;
- (4) The estimated replacement reserves the association will require to maintain the property based on a reserve study performed by the association;
- (5) A general explanation of how the estimated replacement reserves are computed;

- (6) The amount the association must collect for the fiscal year to fund the estimated replacement reserves; and
- (7) Information as to whether the amount the association must collect for the fiscal year to fund the estimated replacement reserves was calculated using a per cent funded or cash flow plan. The method or plan shall not circumvent the estimated replacement reserves amount determined by the reserve study pursuant to paragraph (4).

(b) The association shall assess the unit owners to either fund a minimum of fifty per cent of the estimated replacement reserves or fund one hundred per cent of the estimated replacement reserves when using a cash flow plan; provided that a new association need not collect estimated replacement reserves until the fiscal year which begins after the association's first annual meeting. For each fiscal year, the association shall collect the amount assessed to fund the estimated replacement for that fiscal year reserves, as determined by the association's plan.

(c) The association shall compute the estimated replacement reserves by a formula that is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the property. The estimated replacement reserves shall include:

- (1) Adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and
- (2) Separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed \$10,000. Parts of the property for which capital expenditures or major maintenance will not exceed \$10,000 may be aggregated in a single designated reserve.

(d) No association or unit owner, director, officer, managing agent, or employee of an association who makes a good faith effort to calculate the estimated replacement reserves for an association shall be liable if the estimate subsequently proves incorrect.

(e) Except in emergency situations or with the approval of a majority of the unit owners, a board may not exceed its total adopted annual operating budget by more than twenty per cent during the fiscal year to which the budget relates. Before imposing or collecting an assessment under this subsection that has not been approved by a majority of the unit owners, the board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(f) The requirements of this section shall override any requirements in an association's declaration, bylaws, or any other association documents relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves, and expenditures from reserves with the exception of:

- (1) Any requirements in an association's declaration, bylaws, or any other association documents which require the association to collect more than fifty per cent of reserve requirements; or
- (2) Any provisions relating to upgrading the common elements, such as additions, improvements, and alterations to the common elements.

(g) Subject to the procedures of section -157 and any rules adopted by the commission, any unit owner whose association board fails to comply with this section may enforce compliance by the board. In any proceeding to enforce compliance, a board that has not prepared an annual operating budget and reserve study shall have the burden of proving it has complied with this section.

(h) As used in this section:

“Capital expenditure” means an expense that results from the purchase or replacement of an asset whose life is greater than one year, or the addition of an asset that extends the life of an existing asset for a period greater than one year.

“Cash flow plan” means a minimum twenty-year projection of an association’s future income and expense requirements to fund fully its replacement reserves requirements each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency.

“Emergency situation” means any extraordinary expenses:

- (1) Required by an order of a court;
- (2) Necessary to repair or maintain any part of the property for which the association is responsible where a threat to personal safety on the property is discovered;
- (3) Necessary to repair any part of the property for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget;
- (4) Necessary to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget; or
- (5) Necessary for the association to obtain adequate insurance for the property which the association must insure.

“Major maintenance” means an expenditure for maintenance or repair that will result in extending the life of an asset for a period greater than one year.

“Replacement reserves” means funds for the upkeep, repair, or replacement of those parts of the property, including but not limited to roofs, walls, decks, paving, and equipment, that the association is obligated to maintain.

§ -149 Association fiscal matters; handling and disbursement of funds. (a) The funds in the general operating account of the association shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall a managing agent commingle any association funds with the managing agent’s own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual unit owners of a project and the payment of such ground lease rents to the ground lessor if:

- (1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual unit leases of the project;
- (2) A management contract requires the managing agent to collect ground lease rents from the individual unit owners and pay the ground lease rents to the ground lessor;
- (3) The system of lease rent collection has been approved by a majority vote of all unit owners at a meeting of the association; and
- (4) The managing agent or association does not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual unit owners.

(c) All funds collected by an association, or by a managing agent for any association, shall be:

- (1) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;

- (2) Held by a corporation authorized to do business under article 8 of chapter 412;
 - (3) Held by the United States Treasury; or
 - (4) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation; provided that deposits and certificates of deposit shall not be purchased through a securities broker.
- (d) All funds collected by an association, or by a managing agent for any association, shall be invested only in:
- (1) Deposits, investment certificates, savings accounts, and certificates of deposit, of an institution as defined in subsection (c)(1);
 - (2) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or
 - (3) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year's association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board.

(e) A managing agent or board shall not, by oral instructions over the telephone, transfer association funds between accounts, including but not limited to the general operating account and reserve fund account.

(f) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.

(g) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association shall be guilty of a class C felony.

§ -150 Association fiscal matters; audits, audited financial statement.

(a) The association shall require an annual audit of the association financial accounts and no less than one annual unannounced verification of the association's cash balance by a public accountant; provided that if the association is comprised of less than twenty units, the annual audit and the annual unannounced cash balance verification may be waived by a majority vote of all unit owners taken at an association meeting.

(b) The board shall make available a copy of the annual audit to each unit owner at least thirty days prior to the annual meeting which follows the end of the fiscal year. The board shall not be required to submit a copy of the annual audit report to an owner if the proxy form issued pursuant to section -123(d) is not marked to indicate that the owner wishes to obtain a copy of the report. If the annual audit has not been completed by that date, the board shall make available:

- (1) An unaudited year end financial statement for the fiscal year to each unit owner at least thirty days prior to the annual meeting; and
- (2) The annual audit to all owners at the annual meeting, or as soon as the audit is completed, but not later than six months after the annual meeting.

(c) If the association's fiscal year ends less than two months prior to the convening of the annual meeting, the year-to-date unaudited financial statement may cover the period from the beginning of the association's fiscal year to the end of the month preceding the date on which notice of the annual meeting is mailed.

§ -151 Association fiscal matters; lease rent renegotiation. (a) Notwithstanding any provision in the declaration or bylaws, any lease or sublease of the real estate or of a unit, or of an undivided interest in the real estate to a unit owner, whenever any lease or sublease of the real estate, a unit, or an undivided interest in the real estate to a unit owner provides for the periodic renegotiation of lease rent thereunder, the association shall represent the unit owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent; provided that the association's representation in the renegotiation of lease rent shall be on behalf of at least two lessees. All costs and expenses incurred in such representation shall be a common expense of the association.

(b) Notwithstanding subsection (a), if some, but not all of the unit owners have already purchased the leased fee interest appurtenant to their units at the time of renegotiation, all costs and expenses of the renegotiation shall be assessed to the remaining lessees in the same proportion that the common interest appurtenant to each lessee's unit bears to the common interest appurtenant to all lessees' units. The unpaid amount of this assessment shall constitute a lien upon the lessee's unit, which may be collected in accordance with section -146 in the same manner as an unpaid common expense.

(c) In any project where the association is a lessor or sublessor, the association shall fulfill its obligations under this section by appointing independent counsel to represent the lessees in the negotiations and proceedings related to the rent renegotiation. The lessees' counsel shall act on behalf of the lessees in accordance with the vote or written consent of a majority of the lessees casting ballots or submitting written consents as determined by the ratio that the common interest appurtenant to each lessee's unit bears to the total common interest appurtenant to the units of participating lessees. Nothing in this subsection shall be interpreted to preclude the lessees from making a decision (by the vote or written consent of a majority of the lessees as described above) to retain other counsel or additional professional advisors as may be reasonably necessary or appropriate to complete the negotiations and proceedings. In the event of a deadlock among the lessees or other inability to proceed with the rent renegotiation on behalf of the lessees, the lessees' counsel may apply to the circuit court of the judicial circuit in which the condominium is located for instructions. The association shall not instruct or direct the lessees' counsel or other professional advisors. All costs and expenses incurred under this subsection shall be assessed by the association to the lessees as provided in subsection (a) or (b), as may be applicable.

§ -152 Association records; generally. The association shall keep financial and other records sufficiently detailed to enable the association to comply with requests for information and disclosures related to resale of units. Except as otherwise provided by law, all financial and other records shall be made reasonably available for examination by any unit owner and the owner's authorized agents. Association records shall be stored on the island on which the association's project is located; provided that if original records, including but not limited to invoices, are required to be sent off-island, copies of the records shall be maintained on the island on which the association's project is located.

§ -153 Association records; records to be maintained. (a) An accurate copy of the declaration, bylaws, house rules, if any, master lease, if any, a sample original conveyance document, all public reports and any amendments thereto, shall be kept at the managing agent's office.

(b) The managing agent or board shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The managing agent or board shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(c) Subject to section -152, all records and the vouchers authorizing the payments and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board.

(d) The developer or affiliate of the developer, board, and managing agent shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract.

(e) The managing agent or resident manager or board shall keep an accurate and current list of members of the association and their current addresses, and the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board, and a copy shall be available, at cost, to any member of the association as provided in the declaration or bylaws or rules and regulations or, in any case, to any member who furnishes to the managing agent or resident manager or the board a duly executed and acknowledged affidavit stating that the list:

- (1) Will be used by such owner personally and only for the purpose of soliciting votes or proxies, or for providing information to other owners with respect to association matters; and
- (2) Shall not be used by the owner or furnished to anyone else for any other purpose.

A board may prohibit commercial solicitations.

§ -154 Association records; availability; disposal; prohibitions. (a) The association's most current financial statement and minutes of the board's meetings, once approved, shall be provided to any interested unit owner at no cost or on twenty-four hour loan, at a convenient location designated by the board.

(b) Minutes of meetings of the board and the association for the current and prior year shall be available for examination by unit owners at convenient hours at a place designated by the board. A copy of meeting minutes shall be provided to any owner upon the owner's request provided that the owner pays a reasonable fee for duplication and postage.

(c) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association for the current and prior year and delinquencies of ninety days or more shall be available for examination by unit owners at convenient hours at a place designated by the board; provided that:

- (1) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association or its members or both; and
- (2) Owners shall pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(d) After any association meeting, and not earlier, unit owners shall be permitted to examine proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election; provided that:

- (1) Owners shall make a request to examine the documents within thirty days after the association meeting;
- (2) The board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and
- (3) Owners shall pay for administrative costs in excess of eight hours per year.

If there are no requests to examine proxies and ballots, the documents may be destroyed thirty days after the association meeting. If there are requests to examine proxies and ballots, the documents shall be kept for an additional sixty days, after which they may be destroyed. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request, provided that the owner pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(e) The managing agent shall provide copies of association records maintained pursuant to this section and sections -152 and -153 to owners, prospective purchasers and their prospective agents during normal business hours, upon payment to the managing agent of a reasonable charge to defray any administrative or duplicating costs. If the project is not managed by a managing agent, the foregoing requirements shall be undertaken by a person or entity, if any, employed by the association, to whom this function is delegated.

(f) Prior to the organization of the association, any unit owner shall be entitled to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.

(g) Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.

(h) An association may comply with this part by making information available to unit owners, at the option of each unit owner, and at no cost, for downloading the information through an Internet site.

(i) A managing agent retained by one or more associations may dispose of the records of any association which are more than five years old, except for tax records, which shall be kept for seven years, without liability if the managing agent first provides the board of the association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board within

sixty days, which notice shall include an itemized list of the records proposed to be disposed.

(j) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or association.

§ -155 Association as trustee. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person shall not be bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, shall be fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person shall not be bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

§ -156 Pets. (a) Any unit owner who keeps a pet in the owner's unit pursuant to a provision in the bylaws which allows owners to keep pets or in the absence of any provision in the bylaws to the contrary, upon the death of the animal, may replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's unit or another unit subject to the same bylaws.

(b) Any unit owner who is keeping a pet pursuant to subsection (a), as of the effective date of an amendment to the bylaws which prohibits owners from keeping pets in their units, shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a).

(c) The bylaws may include reasonable restrictions or prohibitions against excessive noise or other problems caused by pets on the property and the running of pets at large in the common areas of the property. No animals described as pests under section 150A-2, or animals prohibited from importation under section 141-2, 150A-5, or 150A-6 shall be permitted.

(d) Whenever the bylaws do not prohibit unit owners from keeping animals as pets in their units, the bylaws shall not prohibit the tenants of the unit owners from keeping pets in the units rented or leased from the owners; provided that:

- (1) A unit owner consents in writing to allow the unit owner's tenant to keep a pet in the unit;
- (2) A tenant keeps only those types of pets that may be kept by unit owners.

The bylaws may allow each owner or tenant to keep only one pet in the unit.

(e) Any amendments to the bylaws that provide for exceptions to pet restrictions or prohibitions for preexisting circumstances shall apply equally to unit owners and tenants.

(f) Nothing in this section shall prevent an association from immediately acting to remove vicious animals to protect persons or property.

§ -157 Attorneys' fees, delinquent assessments, and expenses of enforcement. (a) All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the association for:

- (1) Collecting any delinquent assessments against any owner's unit;
- (2) Foreclosing any lien thereon; or
- (3) Enforcing any provision of the declaration, bylaws, house rules, and this chapter, or the rules of the real estate commission;

against an owner, occupant, tenant, employee of an owner, or any other person who may in any manner use the property, shall be promptly paid on demand to the association by such person or persons; provided that if the claims upon which the association takes any action are not substantiated, all costs and expenses, including reasonable attorneys' fees, incurred by any such person or persons as a result of the action of the association, shall be promptly paid on demand to such person or persons by the association.

(b) If any claim by an owner is substantiated in any action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an owner shall be awarded to such owner; provided that no such award shall be made in any derivative action unless:

- (1) The owner first shall have demanded and allowed reasonable time for the board to pursue such enforcement; or
- (2) The owner demonstrates to the satisfaction of the court that a demand for enforcement made to the board would have been fruitless.

If any claim by an owner is not substantiated in any court action against an association, any of its officers or directors, or its board to enforce any provision of the declaration, bylaws, house rules, or this chapter, then all reasonable and necessary expenses, costs, and attorneys' fees incurred by an association shall be awarded to the association, unless before filing the action in court the owner has first submitted the claim to mediation, or to arbitration under subpart D, and made a good faith effort to resolve the dispute under any of those procedures.

D. ALTERNATIVE DISPUTE RESOLUTION

§ -161 Mediation. (a) At the request of any party to a dispute concerning or involving one or more unit owners and an association, its board, managing agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules, the parties to the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:

- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
- (2) Actions to collect assessments;
- (3) Personal injury claims; or
- (4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.

(c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties.

§ -162 Arbitration. (a) At the request of any party, any dispute concerning or involving one or more unit owners and an association, its board, managing

agent, or one or more other unit owners relating to the interpretation, application, or enforcement of this chapter or the association's declaration, bylaws, or house rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the commission and of chapter 658A; provided that the rules of the arbitration service conducting the arbitration shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658A, chapter 658A shall prevail; and provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.

(b) Nothing in subsection (a) shall be interpreted to mandate the arbitration of any dispute involving:

- (1) The real estate commission;
- (2) The mortgagee of a mortgage of record;
- (3) The developer, general contractor, subcontractors, or design professionals for the project; provided that when any person exempted by this paragraph is also a unit owner, a director, or managing agent, such person in those capacities, shall be subject to the provisions of subsection (a);
- (4) Actions seeking equitable relief involving threatened property damage or the health or safety of unit owners or any other person;
- (5) Actions to collect assessments which are liens or subject to foreclosure; provided that a unit owner who pays the full amount of an assessment and fulfills the requirements of section -146 shall have the right to demand arbitration of the owner's dispute, including a dispute about the amount and validity of the assessment;
- (6) Personal injury claims;
- (7) Actions for amounts in excess of \$2,500 against an association, a board, or one or more directors, officers, agents, employees, or other persons, if insurance coverage under a policy or policies procured by the association or its board would be unavailable because action by arbitration was pursued; or
- (8) Any other cases which are determined, as provided in subsection (c), to be unsuitable for disposition by arbitration.

(c) At any time within twenty days of being served with a written demand for arbitration, any party so served may apply to the circuit court in the judicial circuit in which the condominium is located for a determination that the subject matter of the dispute is unsuitable for disposition by arbitration.

In determining whether the subject matter of a dispute is unsuitable for disposition by arbitration, a court may consider:

- (1) The magnitude of the potential award, or any issue of broad public concern raised by the subject matter underlying the dispute;
- (2) Problems referred to the court where court regulated discovery is necessary;
- (3) The fact that the matter in dispute is a reasonable or necessary issue to be resolved in pending litigation and involves other matters not covered by or related to this chapter;

- (4) The fact that the matter to be arbitrated is only part of a dispute involving other parties or issues which are not subject to arbitration under this section; and
- (5) Any matters of dispute where disposition by arbitration, in the absence of complete judicial review, would not afford substantial justice to one or more of the parties.

Any such application to the circuit court shall be made and heard in a summary manner and in accordance with procedures for the making and hearing of motions. The prevailing party shall be awarded its attorneys' fees and costs in an amount not to exceed \$200.

(d) In the event of a dispute as to whether a claim shall be excluded from mandatory arbitration under subsection (b)(7), any party to an arbitration may file a complaint for declaratory relief against the involved insurer or insurers for a determination of whether insurance coverage is unavailable due to the pursuit of action by arbitration. The complaint shall be filed with the circuit court in the judicial circuit in which the condominium is located. The insurer or insurers shall file an answer to the complaint within twenty days of the date of service of the complaint and the issue shall be disposed of by the circuit court at a hearing to be held at the earliest available date; provided that the hearing shall not be held within twenty days from the date of service of the complaint upon the insurer or insurers.

(e) Notwithstanding any provision in this chapter to the contrary, the declaration, or the bylaws, the award of any costs, expenses, and legal fees by the arbitrator shall be in the sole discretion of the arbitrator and the determination of costs, expenses, and legal fees shall be binding upon all parties.

(f) The award of the arbitrator shall be in writing and acknowledged or proved in like manner as a deed for the conveyance of real estate, and shall be served by the arbitrator on each of the parties to the arbitration, personally or by registered or certified mail. At any time within one year after the award is made and served, any party to the arbitration may apply to the circuit court of the judicial circuit in which the condominium is located for an order confirming the award. The court shall grant the order confirming the award pursuant to section 658A-22, unless the award is vacated, modified, or corrected, as provided in sections 658A-20, 658A-23, and 658A-24, or a trial de novo is demanded under subsection (h), or the award is successfully appealed under subsection (h). The record shall be filed with the motion to confirm award, and notice of the motion shall be served upon each other party or their respective attorneys in the manner required for service of notice of a motion.

(g) Findings of fact and conclusions of law, as requested by any party prior to the arbitration hearing, shall be promptly provided to the requesting party upon payment of the reasonable cost thereof.

(h) Any party to an arbitration under this section may apply to vacate, modify, or correct the arbitration award for the grounds set out in chapter 658A. All reasonable costs, expenses, and attorneys' fees on appeal shall be charged to the nonprevailing party.

§ -163 Trial de novo and appeal. (a) The submission of any dispute to an arbitration under section -162 shall in no way limit or abridge the right of any party to a trial de novo.

(b) Written demand for a trial de novo by any party desiring a trial de novo shall be made upon the other parties within ten days after service of the arbitration award upon all parties and the trial de novo shall be filed in circuit court within thirty days of the written demand. Failure to meet these deadlines shall preclude a party from demanding a trial de novo.

(c) The award of arbitration shall not be made known to the trier of fact at a trial de novo.

(d) In any trial de novo demanded under this section, if the party demanding a trial de novo does not prevail at trial, the party demanding the trial de novo shall be charged with all reasonable costs, expenses, and attorneys' fees of the trial. When there is more than one party on one or both sides of an action, or more than one issue in dispute, the court shall allocate its award of costs, expenses, and attorneys' fees among the prevailing parties and tax such fees against those nonprevailing parties who demanded a trial de novo in accordance with the principles of equity."

SECTION 3. Section 521-3, Hawaii Revised Statutes, is amended to read as follows:

"[§521-3] Supplementary general principles of law, other laws, applicable. (a) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law relative to capacity to contract, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

(b) Every legal right, remedy, and obligation arising out of a rental agreement not provided for in this chapter shall be regulated and determined under chapter 666, and in the case of conflict between any provision of this chapter and a provision of chapter 666, this chapter shall control.

(c) Nothing in this chapter shall be applied to interfere with any right, obligation, duty, requirement, or remedy of a landlord or tenant which is established as a condition or requirement of any program receiving subsidy from the government of the United States. To the extent that any provision of this chapter is inconsistent with such a federal condition or requirement then as to such subsidized project the federal condition or requirement shall control.

(d) A unit owners' association under chapter shall have standing to initiate and prosecute a summary proceeding for possession against a tenant residing in the condominium project who repeatedly violates the association's governing documents or the rights of other occupants to quiet enjoyment and whose landlord refuses to act; provided that in such cases, the landlord shall be named as an additional party defendant.'

PART II

SECTION 4. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board of acupuncture, board of public accountancy, board of barbering and cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of massage therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners in optometry, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, [514A,] _____, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes."

SECTION 5. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners’ revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers’ compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner’s education and training fund, section 431:2-214, the medical malpractice patients’ compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium [management] education trust fund, section [514A-131.] -71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, “compliance resolution” means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;

- (2) Any person subject to chapter 485 has complied with that chapter;
 - (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
 - (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
 - (5) Any person subject to chapter 467B has complied with that chapter;
- and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 6. Section 237-16.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) As used in this section:

"Lease" means the rental of real property under an instrument in writing by which one conveys real property for a specified term and for a specified consideration, and includes the written extension or renegotiation of a lease, and any holdover tenancy.

"Lessee" means one who holds real property under lease, and includes a sublessee.

"Lessor" means one who conveys real property by lease, and includes a sublessor.

"Real property or space" means the area actually rented and used by the lessee, and includes common elements as defined in section [514A-3.] -3.

"Sublease" includes the rental of real property which is held under a lease and is made in a written document by which one conveys real property for a specified term and for a specified consideration. Sublease includes the written extension or renegotiation of a sublease and any holdover tenancy under the written sublease.

"Sublessee" means one who holds real property under a sublease.

"Sublessor" means one who conveys real property by sublease."

SECTION 7. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

"§237-24.3 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (2) Amounts received from sales of:
 - (A) Intoxicating liquor as the term "liquor" is defined in chapter 244D;
 - (B) Cigarettes and tobacco products as defined in chapter 245; and
 - (C) Agricultural, meat, or fish products;
 to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper's vessels or airplanes;

- (3) Amounts received by the manager or board of directors of:
 - (A) An association of apartment owners of a condominium property regime established in accordance with chapter [514A;] ____; or
 - (B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor thereto and existing pursuant to covenants running with the land, in reimbursement of sums paid for common expenses;
- (4) Amounts received or accrued from:
 - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
 - (B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
 - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;
- (5) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;
- (6) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- (7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:
 - (A) "Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and
 - (B) "Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, oste-

opathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

- (8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;
- (9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;
- (10) Amounts received by a labor organization for real property leased to:
 - (A) A labor organization; or
 - (B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.As used in this paragraph, "labor organization" means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;
- (11) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes; and
- (12) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102."

SECTION 8. Section 237D-1, Hawaii Revised Statutes, is amended by amending the definitions of "lease", "let", or "rental" and "transient accommodations" to read as follows:

"Lease", "let", or "rental" means the leasing or renting of living quarters or sleeping or housekeeping accommodations in hotels, apartment hotels, motels, condominium property regimes or apartments defined in chapter [514A,] _____, cooperative apartments, rooming houses, or other places in which lodgings are regularly furnished to transients for a consideration, without transfer of the title of such property.

"Transient accommodations" mean the furnishing of a room, apartment, suite, or the like which is customarily occupied by a transient for less than one hundred eighty consecutive days for each letting by a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter [514A,] _____, cooperative apartment, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for consideration."

SECTION 9. Section 302A-1312, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of accounting and general services, in consultation with the department of education, shall prepare a six-year program and financial plan for school repair and maintenance which shall be:

- (1) Based on:
 - (A) Estimated preventive and scheduled maintenance costs;
 - (B) Budgeted recurring maintenance;
 - (C) Health and safety requirements; and
 - (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section [514A-83.6;] _____-148; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.”

SECTION 10. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee’s conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual’s criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to section 831-3.1 and section 78-2.7;
- (2) The department of education pursuant to section 302A-601.5;
- (3) The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7;
- (6) Armed security services pursuant to section 261-17(b);
- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to section 378-3(8) and section 302C-1;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to section 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;

- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12; and
- (17) The board of directors of an association of apartment owners, or the manager of a condominium project pursuant to section [514A-82.1:]
_____-133.”

SECTION 11. Section 414D-311, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414D-311]**~~]~~ **Superseding chapters.** In the event of any conflict between the provisions of this chapter and the provisions of chapter 421J, [514A,] _____, or 514E, the provisions of chapter 421J, [514A,] _____, or 514E shall supersede and control the provisions of this chapter.”

SECTION 12. Section 421I-9, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§421I-9]**~~]~~ **Mediation and arbitration of disputes.** At the request of any party, any dispute concerning or involving one or more shareholders and a corporation, its board of directors, managing agent, resident manager, or one or more other shareholders relating to the interpretation, application, or enforcement of this chapter or the corporation’s articles of incorporation, bylaws, or rules adopted in accordance with its bylaws shall be submitted first to mediation. When all reasonable efforts for mediation have been made and the dispute is not settled either in conference between the parties or through mediation, the dispute shall be submitted to arbitration in the same manner and subject to the same requirements, to the extent practicable, which now apply to condominium property regimes under [part VII of chapter 514A.] section _____-162.”

SECTION 13. Section 467-1, Hawaii Revised Statutes, is amended by amending the definition of “hotel” to read as follows:

““Hotel” includes a structure or structures used primarily for the business of providing transient lodging for periods of less than thirty days and which furnishes customary hotel services including, but not limited to, front desk, restaurant, daily maid and linen service, bell service, or telephone switchboard; provided that for the purposes of this chapter, apartments in a project as defined by section [514A-3] _____-3 that provide customary hotel services shall be excluded from the definition of hotel. The definition of hotel as set forth in this section shall be in addition to and supplement the definition of “hotel” as set forth in the various county ordinances.”

SECTION 14. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

“**§467-14 Revocation, suspension, and fine.** In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

- (1) Making any misrepresentation concerning any real estate transaction;

- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for the licensee's services from both of the parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the real estate salesperson's employer or the real estate broker with whom the real estate salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a partnership, permits any member of the partnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
- (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the real estate broker represents;
- (13) Violating this chapter; chapter 484, [514A.] ____, 514E, or 515; section 516-71; or the rules adopted pursuant thereto;
- (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a real estate broker may pay a commission to:
 - (A) A licensed real estate broker of another state, territory, or possession of the United States if that real estate broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A real estate broker lawfully engaged in real estate brokerage activity under the laws of a foreign country if that real estate

broker does not conduct in this State any of the negotiations for which a commission is paid; or

- (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any person, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
- (15) Commingling the money or other property of the licensee's principal with the licensee's own;
- (16) Converting other people's moneys to the licensee's own use;
- (17) The licensee is adjudicated insane or incompetent;
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact;
- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee; or
- (20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or real estate salesperson, or on the licensee's own behalf."

SECTION 15. Section 467-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As used in this section, "condominium hotel" includes those apartments in a project as defined in section [514A-3] ____-3 and subject to chapter [514A-] ____, which are used to provide transient lodging for periods of less than thirty days."

SECTION 16. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider's subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;
- (4) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who

acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;

- (5) Pursuant to court order;
- (6) By any government or government agency;
- (7) As cemetery lots or interests; or
- (8) Registered as a condominium property regime pursuant to chapter [514A:] ____."

SECTION 17. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

"§485-6 Exempt transactions. The following transactions shall be exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

- (1) Any isolated nonissuer transaction, whether effected through a dealer or not;
- (2) Any nonissuer transaction in an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;
- (3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;
- (4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
- (8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (9) Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:
 - (A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) during any twelve consecutive months;
 - (B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;
 - (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent

- registered under this chapter, for soliciting a prospective purchaser in this State; and
- (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
- (10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;
- (11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the State;
- (12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward the order is pending under either this chapter or the Act;
- (13) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease which entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, subject, however, to section 485-7;
- (14) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State of an apartment in a condominium project, and a rental management contract relating to the apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words [~~"apartment";~~] "unit", "condominium", and "project" are defined as they are defined in section [514A-3;] ____-3;
- (15) Any transactions not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933;
- (16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:
- (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
 - (ii) The issuer is not in the development stage, without specific business plan or purpose;
 - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
 - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security.
- Any resale of a security sold in reliance on this exemption

within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;

- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
 - (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
 - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:
 - (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
 - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;
- (D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section 485-24.6, and a \$200 filing fee; and
- (E) For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a);
- (17) Any offer or sale of a security effected by a resident of Canada who is excluded from the definition of "dealer" under section 485-1(3)(E);
- (18) Any transaction that is exempt or would be exempt under rule 701, 17 Code of Federal Regulations section 230.701, promulgated under section 3(b) of the Securities Act of 1933;

- (19) Any offer or sale of securities made in compliance with rules 501, 502, 503, 505, and 506 of Regulation D, 17 Code of Federal Regulations sections 230.501, 230.502, 230.503, 230.505, 230.506, 230.507, and 230.508 under the Securities Act of 1933; and
- (20) Any transaction that the commissioner may exempt, conditionally or unconditionally, by rules adopted in accordance with chapter 91 that:
 - (A) Furthers the objectives of compatibility with exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states; or
 - (B) The commissioner finds that registration is not necessary or appropriate in the public interest for the protection of investors."

SECTION 18. Section 501-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No new certificate of title shall be entered, and no memorandum shall be made upon any certificate of title by the registrar or assistant registrar, except:

- (1) In pursuance of any deed or other voluntary instrument;
- (2) Upon the recording of a certificate of merger that merges two or more condominium projects as provided by section [514A-19;] ____-46;
- (3) Upon the recording of an amendment to a declaration of condominium property regime which alters the percentage interest of the respective apartment owners in the common element;
- (4) In cases expressly provided for in this chapter; or
- (5) Upon the order of the court, for cause shown."

SECTION 19. Section 502C-1, Hawaii Revised Statutes, is amended by amending the definitions of "common elements" or "common area", "declaration", and "townhouse" to read as follows:

""Common elements" or "common area" means:

- (1) The same as "common elements" as¹ defined in section [514A-3;] ____-3; and
- (2) Real property within a planned community that is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

"Declaration" means:

- (1) The instrument by which property is submitted to chapter [514A;] ____, as provided in that chapter, and such declaration as from time to time amended; and
- (2) Any recorded instrument, however denominated, that imposes on an association maintenance or operational responsibilities for the common area and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, including any amendment or supplement to the instrument.

"Townhouse" means a series of individual apartments or units having architectural unity and common elements, with each apartment or unit extending from ground to roof or from the first or second floor to roof, and where apartments or units may share a common wall or be freestanding structures, including townhouse projects that are created pursuant to chapters [514A] ____ and 421J, as well as projects that are not created pursuant to those chapters but are governed by an association; provided that "townhouse" shall not include any apartments or units located in a building of more than three stories."

SECTION 20. Section 514C-22, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) For purposes of this section:

“Remaining lessees” means the lessees of condominium units in a condominium project who have not purchased the leased fee interest in their condominium units as of the effective date of the amendment referred to in subsection (d)(1).

“Condominium unit” has the same meaning as the term [“apartment”]² “unit” as defined in section [514A-3.] ____-3.”

SECTION 21. Section 514E-1, Hawaii Revised Statutes, is amended by amending the definition of “blanket lien” to read as follows:

““Blanket lien” means any mortgage, deed of trust, option to purchase, vendor’s lien or interest under a contract or agreement of sale, or any other lien or encumbrance which (i) affects more than one time share interest either directly or by reason of affecting an entire time share unit or the property upon which the time share unit to be used by the purchasers is located, and (ii) secures or evidences the obligation to pay money or to sell or convey the property and which authorizes, permits, or requires the foreclosure and sale or other defeasance of the property affected; provided, however, that for the purpose of this chapter, the following shall not be considered blanket liens:

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority;
- (3) A lien for common expenses under chapter [514A] ____ or a lien for similar expenses in favor of a homeowners or community association;
- (4) An apartment lease or condominium conveyance document conveying a single condominium apartment or a lease of a single cooperative apartment; and
- (5) Any lien for costs or trustee’s fees charged by a trustee holding title to time share units pursuant to a trust created under section 514E-19.”

SECTION 22. Section 514E-29, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notice of any delinquent lien created pursuant to subsection (c) shall be recorded in the bureau of conveyances and upon recordation shall be prior to all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the time share interest;
- (2) All sums unpaid on any mortgage of record encumbering the time share interest which was recorded prior to the recordation of a notice of a lien by the association; and
- (3) For a time share interest subject to a condominium property regime, the lien of the association of apartment owners created pursuant to section [514A-90.] ____-146.”

SECTION 23. Section 516D-1, Hawaii Revised Statutes, is amended to read as follows:

“[H]§516D-1[H] **Applicability.** This chapter applies to all lands on which are situated either residential condominium property regimes created under chapter [514A,] ____, or cooperative housing corporations, which are owned or held privately or by the State or by the counties, except Hawaiian home lands subject to Article XII of the State Constitution and lands owned or held by the federal government.”

SECTION 24. Section 521-38, Hawaii Revised Statutes, is amended to read as follows:

“§521-38 Tenants subject to rental agreement; notice of conversions. When a period of tenancy is pursuant to any rental agreement and where a landlord contemplates conversion to condominium property regime under chapter [514A,] _____, the landlord[
 (1) ~~Shall~~] shall provide notice to the tenant at least one hundred twenty days in advance of the termination of the rental agreement[, and
 (2) ~~Shall comply with the provisions relating to such conversions provided in section 514A-105].”~~

SECTION 25. Section 521-71, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, conversion to a condominium property regime under chapter [514A,] _____, or changing the use of the building to transient vacation rentals, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination[, and shall comply with the provisions relating to conversions provided in section 514A-105, if applicable]. If notice is revoked or amended and reissued, the notice period shall begin from the date it was reissued or amended. Any notice provided, revoked, or amended and reissued shall be in writing. When the landlord provides notification of termination pursuant to this subsection, the tenant may vacate at any time within the one-hundred-twenty-day period between the notification and the termination date, but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation.”

SECTION 26. Parts I, V, and VII of chapter 514A, Hawaii Revised Statutes, are repealed.

PART III.

SECTION 27. The legislature finds that the existing procedures to resolve condominium association management disputes need improvement. The existing procedures to resolve disputes include the self-governance procedures within each association of apartment owners, mediation, arbitration, minimal government intervention, and actions through the courts. The legislature therefore finds that there is a need for an expeditious, less costly, uniform, and uncomplicated procedure to handle certain simple statutory issues. The purpose of this part is to initiate a two-year pilot program by the office of administrative hearings, department of commerce and consumer affairs, with partial funding by the condominium management education fund.

SECTION 28. Section 514A-121.5, Hawaii Revised Statutes, is amended to read as follows:

“§514A-121.5 Mediation[-]; condominium management dispute resolution; request for hearing; hearing. (a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners’ declaration, bylaws, or house rules, or involving section 514A-82(b)(1) to (13), 514A-82.1, 514A-82.15, 514A-82.3, 514A-82.5, 514A-82.6, 514A-83, 514A-83.1, 514A-83.2, 514A-83.3, 514A-83.4,

514A-83.5, 514A-84, [or] 514A-84.5, or 514A-92.5, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation; unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If an apartment owner or the board of directors refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorney's fees in accordance with section 514A-94.

(b) If a dispute is not resolved by mediation as provided in subsection (a), in addition to any other legal remedies that may be available, any party that participated in the mediation may file a request for a hearing with the office of administrative hearings, department of commerce and consumer affairs as follows:

- (1) The party requesting the hearing must be a board of directors of a duly registered association of apartment owners, or an apartment owner that is a member of a duly registered association pursuant to section 514A-95.1;
- (2) The request for hearing must be filed within thirty days from the final day of mediation;
- (3) The request for hearing must name one or more parties that participated in the mediation as an adverse party and identify the statutory provisions in dispute; and
- (4) No dispute arising out of section 514A-82(b)(1) to (13), section 514A-82.3, section 514A-82.5, section 514A-82.6, section 514A-83.1(b), section 514A-83.4(c), or relating to the interpretation or application of any association of owners' declaration, bylaws, or house rules may be the subject of any request for hearing under this section.

(c) For purposes of the pilot program, the office of administrative hearing for the department of commerce and consumer affairs shall accept no more than thirty requests for hearing per fiscal year under this section.

(d) The party requesting the hearing shall pay a filing fee of \$25 to the department of commerce and consumer affairs, and the failure to do so shall result in the request for hearing being rejected for filing. All other parties shall file a response, accompanied by a filing fee of \$25 to the department of commerce and consumer affairs, within twenty days of being served with the request for hearing.

(e) The hearings officers appointed by the director of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review any request for hearing filed under subsection (b). The hearings officers shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that shall be final and conclusive, unless a party adversely affected by the decision files an appeal in the circuit court under section 91-14.

(f) Chapter 16-201, Hawaii Administrative Rules, shall govern all proceedings brought under this section. The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.

(g) Hearings to review and make determinations upon any requests for hearings filed under subsection (b) shall commence within sixty days following the receipt of the request for hearing. The hearing officer shall issue written findings of fact, conclusions of law, and an order as expeditiously as practicable after the hearing has been concluded.

(h) Each party to the hearing shall bear the party's own costs, including attorney's fees, unless otherwise ordered by the hearing officer.

(i) Any party to a proceedings under this section who is aggrieved by a final decision of a hearings officer may apply for judicial review of that decision pursuant to section 91-14; provided that any party seeking judicial review pursuant to section 91-14 shall be responsible for the costs of preparing the record on appeal, including the cost of preparing the transcript of the hearing.

(j) The department of commerce and consumer affairs may adopt rules and forms, pursuant to chapter 91, to effectuate the purpose of this section and to implement its provisions.”

SECTION 29. The director of commerce and consumer affairs shall prepare and submit to the legislature, twenty days prior to the convening of the 2005 and 2006 regular sessions, a report containing the director’s evaluation of the operation and effect of the pilot program established by this part. The report shall include a summary of the requests for hearing brought under the pilot program, the disposition of such requests for hearing, an appraisal of the effectiveness of the pilot program, and recommendations for changes, modifications or repeal of the pilot program or parts thereof with accompanying reasons and data.

SECTION 30. There is appropriated out of the condominium management education fund the sum of \$25,000, or so much thereof as may be necessary for fiscal year 2004-2005, to defray the operational expenses of this pilot program.

SECTION 31. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

PART IV.

SECTION 32. There is appropriated out of the condominium management education fund the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2004-2005, to conduct post-bill passage educational activities, including the continuation of one full-time temporary condominium specialist position in the department of commerce and consumer affairs (with the option of hiring a person as either an employee of the department or a consultant to the department), and other current expenses.

SECTION 33. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

PART V.

SECTION 34. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 35. This Act shall take effect on July 1, 2005; provided that:

- (1) Section -146 in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;
- (2) Section -161 in part I of this Act, relating to mediation shall take effect on July 1, 2006;
- (3) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006;
- (4) Sections 30 to 33 of this Act shall take effect on July 1, 2004; and

- (5) If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective July 1, 2005, parts I and II of this Act shall be repealed on June 30, 2005.

(Approved July 2, 2004.)

Notes

1. Should be underscored.
2. Should be stricken.

ACT 165

H.B. NO. 2140

A Bill for an Act Relating to Mandatory Continuing Education for Pharmacists.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the profession of pharmacy is in constant change and is challenged with the continuous development of new drugs and new drug therapies, and changes in evidence-based uses of drugs. The rise in consumer use of prescription drugs and over-the-counter drugs, as well as nutraceuticals, herbs, and alternative drugs, also contributes to the increase in drug misuse and abuse, noncompliance, and medication errors—all of which factor into the high cost of drugs. Consumers depend on pharmacists to be fully informed about the proper use of drugs, side effects, potential contraindications, drug interactions, alternative therapies, and new drug products. Hawaii is the only state that does not require continuing education for pharmacists.

The purpose of this Act is to require pharmacists licensed in the State of Hawaii to complete a minimum of thirty hours of formal continuing education during each licensing biennium.

SECTION 2. Section 461-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Continuing education courses” means courses approved by the American College of Pharmaceutical Education or continuing medical education courses that serve to improve patient safety and to maintain quality national standards in the prevention of medical errors.

“Credit hour”, except as otherwise provided, means the value assigned to sixty minutes of instruction.”

SECTION 3. Section 461-8, Hawaii Revised Statutes, is amended to read as follows:

“**\$461-8 Renewal of licenses[-]; continuing education requirement.** (a) All licenses issued by the board, except temporary licenses issued under section 461-7, shall be renewed biennially on or before December 31 of each odd-numbered year. Failure to pay the biennial fee and, beginning with the renewal for the licensing biennium commencing on January 1, 2008, to satisfy the continuing education requirement on or before December 31 of each odd-numbered year, shall constitute a forfeiture of the license as of the date of expiration.

(b) Any license forfeited pursuant to subsection (a) may be restored within three years upon payment of any penalty fee, the current biennial fees, and the renewal fee for the next biennium, if applicable, upon submission of proof of compliance with the continuing education requirement for the prior biennium,

and upon meeting any other requirements specified in rules adopted pursuant to chapter 91.

(c) In the event that the pharmacist has not engaged in the practice of pharmacy in this State or in another state or territory of the United States within the past five years, the board may require the pharmacist to satisfy additional requirements, as specified in rules adopted pursuant to chapter 91, to demonstrate that the pharmacist is competent to practice in this State.

(d) Beginning with the renewal for the licensing biennium commencing on January 1, 2008, and every biennial renewal thereafter, each licensee shall have completed thirty credit hours in continuing education courses within the two-year period preceding the renewal date, regardless of the licensee's initial date of licensure; provided that a licensee who has graduated from an accredited pharmacy school within one year of the licensee's first license renewal period shall not be subject to the continuing education requirement for the first license renewal. The board may extend the deadline for compliance with the continuing education requirement based on any of the following:

- (1) Illness, as certified by a physician licensed under chapter 453 or 460, or licensed in the jurisdiction in which the licensee was treated;
- (2) Military service under extended active duty with the armed forces of the United States;
- (3) Lack of access to continuing education courses due to the practice of pharmacy in geographically isolated areas; and
- (4) Inability to undertake continuing education due to incapacity, undue hardship, or other extenuating circumstances.

(e) Each licensee shall maintain the licensee's continuing education records. At the time of renewal, each licensee shall certify under oath that the licensee has complied with the continuing education requirement of this section. The board may require a licensee to submit, in addition to the certification, evidence satisfactory to the Board that demonstrates compliance with the continuing education requirement of this section.

(f) The board may conduct random audits to determine compliance with the continuing education requirement. The board shall provide written notice of an audit to a licensee randomly selected for audit. Within sixty days of notification, the licensee shall provide the board with documentation verifying compliance with the continuing education requirement."

SECTION 4. Section 461-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board shall have the power to deny, revoke, or suspend any license or permit applied for or issued by the board in accordance with this chapter, and to fine or otherwise discipline a licensee or permit holder for any cause authorized by law, including but not limited to the following:

- (1) Procuring a license through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, or manifest incapacity;
- (3) Permitting an unlicensed person to perform activities which require a license under this chapter;
- (4) Violation of any of the provisions of this chapter or the rules adopted pursuant thereto;
- (5) Violation of any state or federal drug, controlled substance, or poison law;
- (6) False, fraudulent, or deceptive advertising;
- (7) Any other conduct constituting fraudulent or dishonest dealings;
- (8) Failure to comply with a board order;

ACT 166

- (9) Making a false statement on any document submitted or required to be filed by this chapter[;], including a false certification of compliance with the continuing education requirement; or
- (10) Habitual intemperance or addiction to the use of habit-forming drugs.”

SECTION 5. The board of pharmacy shall provide written notification of the contents of this Act to all persons licensed under chapter 461, Hawaii Revised Statutes, within ninety days of the effective date of this Act.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval and shall apply to license renewals for the licensing biennium beginning on January 1, 2008.

(Approved July 2, 2004.)

ACT 166

S.B. NO. 2586

A Bill for an Act Relating to Professional and Vocational Licensing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to attract additional dental care providers who are willing to work in nonprofit health centers that serve low-income and uninsured communities statewide. Presently, Kokua Kalihi Valley, Kalihi Palama Health Center, Kauai Community Health Center, Bay Clinic, Waianae Coast Comprehensive Health Center, and Hana Community Health Center are all nonprofit federally qualified health centers that offer dental clinic services. Additional centers are expected to open dental clinics in the near future.

While Hawaii has a favorable dentist-to-population ratio in comparison with other states, nonprofit health center dental clinics have difficulty recruiting sufficient staff. The Hawaiian islands oral health task force, a coalition representing the concerns of various state government agencies, island oral health task forces, nonprofit primary care providers, the dental insurance industry, and health professional organizations, convened this past year to develop and agree on a strategy to provide the best means of enhancing the recruitment and retention of dentists and dental hygienists in dental safety net clinics in nonprofit health centers. This is expected to bring relief to many communities that have a backlog of dental treatment needs. It is believed that Hawaii does not need more dental care workers per se, rather, there is a need for more dental care workers who are willing to work in safety net dental clinics. The establishment of a community service license category would facilitate recruitment and retention of interested persons from other states, while helping to assure that high community standards of dental care are maintained.

The purpose of this Act is to ensure that more dental care providers are available to work in nonprofit health centers that serve low-income and uninsured communities statewide by creating the category of community service license for eligible dentists and dental hygienists. In addition, this Act amends statutory references to the American Dental Association’s Council on Dental Education. Accreditation is now handled through an organization known as the Commission on Dental Accreditation, which operates under the auspices of the American Dental Association.

SECTION 2. Chapter 447, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§447- Community service license. (a) The board of dental examiners may issue, without examination, a community service license to practice dental hygiene in the employment of a federally qualified health center, Native Hawaiian health care system, or post-secondary dental auxiliary training program accredited by the American Dental Association Commission on Dental Accreditation. Community service licensees under this section shall abide by the requirements and conditions placed upon those fully licensed under this chapter.

Eligible candidates shall:

- (1) Provide copies of documentation and credentials that include but are not limited to:
 - (A) A diploma or certificate of graduation from a dental hygiene college accredited by the American Dental Association Commission on Dental Accreditation, recognized and approved by the board; and
 - (B) Either of the following:
 - (i) A certificate or other evidence satisfactory to the board of having passed the examination of the National Board Dental Hygiene Examination, within five years of the date of request; or
 - (ii) Evidence of active clinical dental hygiene practice of not less than one thousand hours per year for the three years immediately prior to the date of request;
- (2) Provide a copy of an active, unrestricted dental hygiene practice license from another state;
- (3) Disclose to the board of dental examiners all previous and pending legal or regulatory action relating to claims of malpractice, personal, or professional misconduct; and
- (4) Pay applicable registration fees, which shall be one half of the prevailing biennial registration fee for dental hygienists.

No person who after the effective date of this section has failed to pass the license examination administered under this chapter may be issued a community service dental hygiene license.

(b) Community service licensees shall actively participate in a formal and ongoing program of clinical quality assurance.

(c) A license may be renewed annually, pending review and reauthorization of the board of dental examiners.

(d) A community service license authorizes the licensee to practice dental hygiene only within the employment of an eligible organization and shall be in force until the earliest of the following occurs:

- (1) The date the person leaves the employment authorized under the community service license;
- (2) The date on which the results of the license examination taken by the person under this chapter are posted by the board;
- (3) The date the community service license expires; or
- (4) The date on which the board revokes the community service license; provided that the board may revoke the community service license at any time for cause.

(e) Commissioned officers of the United States Army, the United States Navy, the United States Air Force, the United States Public Health Service, or the United States Veterans Administration practicing in a federally qualified health center or Native Hawaiian health systems center, shall qualify for a community

service license to practice dental hygiene, which may be issued for the term of the dental hygienists federal duty assignment. Officers shall provide to the board of dental examiners:

- (1) A copy of an active, unrestricted dental hygiene license from another state; and
- (2) A copy of documentation reflecting official duty assignment to a qualifying community service dental hygiene license site.”

SECTION 3. Chapter 448, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§448- Community service license. (a) The board of dental examiners may issue, without examination, a community service license to practice dentistry in the employment of a federally qualified health center, Native Hawaiian health systems center, or post-secondary dental auxiliary training program accredited by the American Dental Association Commission on Dental Accreditation. Community service licensees under this section shall abide by the requirements and conditions placed upon those fully licensed under this chapter.

Eligible candidates shall:

- (1) Provide copies of documentation and credentials that include but are not limited to:
 - (A) A diploma or certificate of graduation from a dental college accredited by the American Dental Association Commission on Dental Accreditation, recognized and approved by the board; and
 - (B) Either of the following:
 - (i) A certificate or other evidence satisfactory to the board of having passed part II of the National Board Dental Examination within five years of the date of request; or
 - (ii) Evidence of active practice of clinical dentistry of not less than one thousand hours per year for the three years immediately prior to the date of request;
- (2) Provide a copy of an active, unrestricted dental practice license from another state;
- (3) Disclose to the board of dental examiners all previous and pending legal or regulatory action relating to claims of malpractice, or personal or professional misconduct; and
- (4) Pay applicable registration fees, which shall be one half of the prevailing biennial registration fee for dentistry.

No person who after the effective date of this Act has failed to pass the license examination administered under this chapter shall have the benefit of a community service dental license.

(b) Community service licensees shall actively participate in a formal and ongoing program of clinical quality assurance.

(c) A license may be renewed annually, pending review and reauthorization of the board of dental examiners.

(d) A community service license authorizes the licensee to practice dentistry only within the employment of an eligible organization and shall be in force until the earliest of the following occurs:

- (1) The date the person leaves the employment authorized under the community service license;
- (2) The date on which the results of the license examination taken by the person under this chapter are posted by the board;
- (3) The date the community service license expires; or

- (4) The date on which the board revokes the community service license; provided that the board may revoke the community service license at any time for cause.
- (e) Commissioned officers of the United States Army, the United States Navy, the United States Air Force, the United States Public Health Service, or the United States Veterans Administration practicing in a federally qualified health center or Native Hawaiian health systems center shall qualify for a community service license to practice dentistry, which may be issued for the term of the officer's federal duty assignment. Officers shall provide to the board of dental examiners:
 - (1) A copy of an active, unrestricted dental practice license from another state; and
 - (2) A copy of documentation reflecting official duty assignment to a qualifying community service dental license site."

SECTION 4. Section 448-9, Hawaii Revised Statutes, is amended to read as follows:

"§448-9 Application for examination for graduates of dental colleges accredited by the American Dental Association[;] Commission on Dental Accreditation. Any person of eighteen years or more shall be eligible to take an examination before the board upon submission of:

- (1) An application on a form prescribed by the board to the executive secretary of the board not later than sixty days prior to the date of the scheduled examination;
- (2) Application and examination fees; and
- (3) Documentation and credentials that shall include but are not limited to the following:
 - (A) A diploma or certificate of graduation from a dental college accredited by the [~~Council of Dental Education of the~~] American Dental Association[;] Commission on Dental Accreditation, recognized and approved by the board; and
 - (B) A certificate or other evidence satisfactory to the board of having passed parts I and II of the [~~examination of the~~] National Board [~~of~~] Dental [~~Examiners~~] Examination."

SECTION 5. Section 448-9.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person of eighteen years or more, who is a graduate of a foreign dental school not accredited by the American Dental Association and a permanent resident of the United States shall be eligible to take an examination before the board upon submission of:

- (1) An application on a form prescribed by the board to the executive secretary of the board not later than sixty days prior to the date of the scheduled examination;
- (2) Application and examination fees; and
- (3) Documentation and credentials that shall include but are not limited to the following:
 - (A) A complete transcript of the academic and clinical dental school record of the applicant, authenticated by either the president, secretary, dean, or registrar of the educational institution;
 - (B) A legible, true copy of the dental diploma or dental degree conferred upon the applicant as evidence of the completion of the courses of dental instruction required for graduation, authen-

- (C) Certification by the licensing authority of the governmental jurisdiction, wherein is located the foreign institution from which the applicant was graduated that the applicant has been admitted or licensed to practice dentistry in that foreign state, country, or political subdivision;
- (D) A certificate or other evidence satisfactory to the board of having passed parts I and II of the ~~[examination of the]~~ National Board ~~[of] Dental [Examiners; Examination; and~~
- (E) Other documentation and credentials as may be required by the board.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, 2009; provided that sections 448-9 and 448-9.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act.

(Approved July 2, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 167

S.B. NO. 2951

A Bill for an Act Relating to Radiologic Technology.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 466J-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board shall:

- (1) Select its own chairperson from among its members;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91 as necessary to effectuate the purposes of this chapter;
- (3) Determine minimum standards for and approve educational institutions that provide a course of instruction in radiologic technology that meets the requirements of this chapter;
- (4) Withdraw approval or deny approval of educational institutions for failure to meet prescribed standards;
- (5) Examine qualified applicants [and], grant, deny, suspend, or revoke licenses, impose administrative remedies that are authorized by this chapter, and impose such conditions as may be necessary in connection with the granting, denial, suspension, or revocation of licenses;
- (6) Keep a record of all its proceedings; and
- (7) Make an annual report to the governor."

SECTION 2. Section 466J-3, Hawaii Revised Statutes, is amended to read as follows:

“§466J-3 Executive [secretary;] officer; other assistants. (a) Subject to chapter 76 the department of health may employ and remove such administrative and clerical assistants as the board may require and prescribe their powers and duties.

(b) The department shall employ an executive [secretary] officer of the board whose position shall be subject to chapter 76. The executive [secretary] officer shall [be]:

- (1) ~~[Employed]~~ Be employed with due regard to the [secretary's] officer's fitness, thorough administrative ability, and knowledge of and experience in the field of radiologic technology;
- (2) ~~[Under the supervision of the board, and shall administer]~~ Administer this chapter and the rules and orders established hereunder and perform such other duties as the board may require; and
- (3) ~~[In charge of the offices of the board and responsible to the board for the preparation of]~~ Prepare reports and ~~[the collection]~~ collect and ~~[dissemination of]~~ disseminate data and other public information relating to radiologic technology.”

SECTION 3. Section 466J-9, Hawaii Revised Statutes, is amended to read as follows:

“§466J-9 Violations of chapter; penalties. (a) It shall be a misdemeanor for any person, including any corporation, association, or individual, to:

- (1) Sell or fraudulently obtain or furnish any radiographer's, radiation therapist's, or nuclear medicine technologist's diploma, license, renewal, or record or aid or abet therein;
- (2) Use in connection with the person's name any designation tending to imply that the person is a certified radiographer, [a] certified radiation therapist, or certified nuclear medicine technologist unless licensed to practice under this chapter;
- (3) Practice radiologic technology during the time the person's license issued under this chapter is suspended or revoked; or
- (4) Violate any provision of this chapter.

(b) Any person who violates this chapter, or any rule adopted by the board pursuant to this chapter, shall be fined not more than \$2,000 for each separate offense. Each day the violation continues may constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 4. The radiologic technology board shall report to the legislature regarding the issue of monetary fines for violations of chapter 466J, Hawaii Revised Statutes, and related administrative rules. The report shall include information regarding the implementation of section 466J-9(b), Hawaii Revised Statutes, the sufficiency of the fine established therein, and the board's efforts in adopting guidelines for the imposition of fines. The board shall submit its report to the legislature no later than twenty days before the convening of the regular session of 2005.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 2, 2004.)

A Bill for an Act Relating to Applications Seeking General Rate Increases Filed by Public Utilities Having Annual Gross Revenues of Less Than \$2,000,000.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that public utility companies whose annual gross revenues are less than \$2,000,000 may often incur significant costs to file an application for a general rate increase request with the public utilities commission. The costs incurred by the public utility to process a general rate application will, in part or in whole, be passed on to ratepayers through the authorized rates that are charged for the utility service.

The legislature also finds that the costs incurred by public utility companies to process a rate increase request often are higher than necessary due to the failure to include the necessary facts to support the requested rate increase at the time of the application filing. This situation occurs because the utility companies are not required to submit the information in a standard filing format and because utility companies are not required to follow a prescribed standard chart of accounts for recording financial information on the operations for public utilities. In addition, the consumer advocate who is statutorily responsible for representing, protecting, and advancing the interests of all customers of the utility service, is not able to monitor the annual financial performance of the utilities in years between rate case filings because the utility companies whose annual gross revenues are less than \$2,000,000 are not required to file annual financial and statistical information with the consumer advocate.

As a result of the above, the consumer advocate, in carrying out its statutory duties, must seek substantial discovery in order to obtain the basic information that must be provided to complete the review of the public utility's request for general rate increases. The public utility, in turn, must assign staff resources and incur additional costs to respond to the discovery and justify the requested increase. As a corollary, the consumer advocate's staff is also required to expend a significant amount of time to analyze the public utility company's request to protect the interests of ratepayers.

The legislature finds that many public utilities whose annual gross revenues are less than \$2,000,000 do not have employees dedicated to processing the filing of applications before regulatory agencies such as the public utilities commission, nor do these companies have ready access to these types of employees through affiliated companies. As a result these public utilities must often retain the services of consulting experts and legal counsel to provide the assistance needed to process the general rate increase filing. The outside services ultimately increase the costs incurred by the public utility company to do business in the State.

Therefore, the legislature finds that the public utilities having annual gross revenues of less than \$2,000,000 should not be unduly burdened by the rate filing process. On the other hand, in order to protect the consumer interests, the utility companies should be required to provide substantive and reliable evidence to support the requested rate adjustment.

In addition, the legislature finds that certain administrative processes are necessary to assist in expediting the rate making process. These processes should result in the utility companies and the consumer advocate expending less resources to complete the review process for a general rate increase application; the expenditure of less time and resources will benefit the public utility, as well as the utility's customers.

The purposes of this Act are to: (1) mandate the filing of annual financial statement reports by public utility companies with annual gross revenues of less than \$2,000,000 in accordance with a prescribed standard chart of accounts to be approved by the commission; (2) require the development of a standard rate adjustment application form; (3) provide requirements for implementing an expedited filing process, or processes, for receiving public utilities commission authorization to adjust rates for public utility companies having annual gross revenues of less than \$2,000,000; and (4) establish time periods for the completion of the review of the general rate increase applications filed with the standard application form.

SECTION 2. Section 269-16, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) [För] Notwithstanding any law to the contrary, for public utilities having annual gross revenues of less than \$2,000,000, the commission may make and amend its rules and procedures which will provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers. In the determination of the reasonableness of the proposed rates, the commission shall:

- (1) Require the filing of a standard form application to be developed by the commission. The standard form application for general rate increases shall describe the specific facts that must be submitted to support a determination of the reasonableness of the proposed rates, and require the submission of financial information in conformance with a standard chart of accounts to be approved by the commission, and other commission guidelines to allow expeditious review of a requested general rate increase application;
- (2) Hold a public hearing as prescribed in section 269-12(c) at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The public hearing shall be preceded by proper notice, as prescribed in section 269-12; and
- (3) Make every effort to complete its deliberations and issue a proposed decision and order within six months from the date the public utility files a completed application with the commission, provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene. If a proposed decision and order is rendered after the six-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the proposed decision and order. Prior to the issuance of the commission’s proposed decision and order, the parties shall not be entitled to a contested case hearing.

If all parties to the proceeding accept the proposed decision and order, the parties shall not be entitled to a contested case hearing, and section 269-15.5 shall not apply. If the commission permits a person to intervene, the six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility’s completed application was filed, pursuant to subsections (b), (c), and (d).

If a party does not accept the proposed decision and order, either in whole or in part, that party shall give notice of its objection or nonacceptance within the timeframe prescribed by the commission in the proposed decision and order, setting forth the basis for its objection or nonacceptance; provided that the proposed decision and order shall have no force or effect pending the commission’s final decision. If

notice is filed, the above six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed as set forth in subsection (d). Any party that does not accept the proposed decision and order under this paragraph shall be entitled to a contested case hearing; provided that the parties to the proceeding may waive the contested case hearing.

Public utilities subject to this subsection shall follow the standard chart of accounts to be approved by the commission for financial reporting purposes. The public utilities shall file a certified copy of the annual financial statements in addition to an updated chart of accounts used to maintain their financial records with the commission and consumer advocate within ninety days from the end of each calendar or fiscal year, as applicable, unless this timeframe is extended by the commission. The owner, officer, general partner, or authorized agent of the utility shall certify that the reports were prepared in accordance with the standard chart of accounts."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2004.)

ACT 169

S.B. NO. 3044

A Bill for an Act Relating to Public Property.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the article XI, section 1, of the State Constitution states, "All public natural resources are held in trust by the State for the benefit of the people." In the 1977 case of *State v. Zimring*, 58 Haw. 106, the state supreme court implied such an extension when it noted that the State's duty to protect and maintain public trust property was "implemented by devoting the land to actual public uses, e.g. recreation." The legislature finds that the public's right to the use and enjoyment of public trust areas is meaningful only if there is an access right. The restriction of access is an infringement upon the fundamental right of free movement to and use of coastal and inland recreational areas.

The purpose of this Act is to establish penalties for obstructing the right of the public access to the sea, shorelines, and inland recreational areas by way of or through any of the public rights-of-way, transit areas, or public transit corridors.

SECTION 2. Chapter 115, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§115- Obstructing access to public property; penalty. (1) A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing:

- (a) A public right-of-way;
- (b) A transit area; or
- (c) A public transit corridor;

and thereby obstructs access to the sea, the shoreline, or any inland public recreational area.

(2) Physical impediments that may prevent traversing include but are not limited to the following:

- (a) Gates;
 - (b) Fences;
 - (c) Walls;
 - (d) Constructed barriers;
 - (e) Rubbish;
 - (f) Security guards; and
 - (g) Guard dogs or animals.
- (3) Obstructing access to public property is a misdemeanor.
- (4) Minimum fines for violation under this section shall be as follows:
- (a) \$1,000 for a second conviction; and
 - (b) \$2,000 for any conviction after a second conviction.
- (5) As used in this section:

“Person” means a natural person or a legal entity.

“Public recreational area” means public lands or bodies of water opened to the public for recreational use.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 2004.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 170

S.B. NO. 2246

A Bill for an Act Relating to Agriculture.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 205-4.6, Hawaii Revised Statutes, is amended to read as follows:

“[§205-4.6]] Private restrictions on agricultural uses and activities; not allowed. Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any deed, [lease,] agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4[.]; except that restrictions taken to protect environmental or cultural resources [~~shall not be void or voidable.~~], agricultural leases, utility easements, and access easements shall not be subject to this section.

For purposes of this section, "agricultural leases" means leases where the leased land is primarily utilized for purposes set forth in section 205-4.5(a)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 6, 2004.)

ACT 171

H.B. NO. 2363

A Bill for an Act Relating to Public Benefit Corporations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 414D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§414D- Notice to the attorney general of commencement of proceeding. (a) The attorney general shall be given written notice of the commencement of any proceeding that this chapter authorizes the attorney general to bring but that has been commenced by another person within ten days of its commencement.

(b) Whenever any provision of this chapter requires that notice be given to the attorney general before or after the commencement of a proceeding or permits the attorney general to commence a proceeding:

- (1) If no proceeding has been commenced, the attorney general may take appropriate action, including but not limited to seeking injunctive relief; or
- (2) If a proceeding has been commenced by a person other than the attorney general, the attorney general, as of right, may intervene in such proceeding."

SECTION 2. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part X a new section to be appropriately designated and to read as follows:

"§414D- Limitations on merger by public benefit corporations. (a) Without the prior approval of the circuit court for the first circuit in a proceeding in which the attorney general has been given written notice, a public benefit corporation may merge only with:

- (1) A public benefit corporation;
- (2) A foreign corporation that would qualify under this chapter as a public benefit corporation;
- (3) A wholly owned corporation, if the public benefit corporation is the surviving corporation and continues to be a public benefit corporation after the merger;
- (4) A corporation; provided that:
 - (A) On or prior to the effective date of the merger, assets with an equal value to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the public benefit corporation, or the fair market value of the public benefit corporation if it were to be operated as a business concern, are

- transferred to one or more persons who would have received its assets under section 414D-245(a)(5) and (6) had it dissolved;
- (B) The public benefit corporation shall return, transfer, or convey an asset held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and
 - (C) The merger is approved by a majority of directors of the public benefit corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(b) At least twenty days before the consummation of any merger of a public benefit corporation pursuant to subsection (a)(4), notice, including a copy of the proposed plan of merger, shall be delivered to the attorney general.

(c) Without the prior written approval of the attorney general or the circuit court for the first circuit, in a proceeding in which the attorney general has been given written notice, no member of a public benefit corporation may receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation. The court shall approve the transaction if it is in the public interest."

SECTION 3. Chapter 414D, Hawaii Revised Statutes, is amended by adding to part XII a new section to be appropriately designated and to read as follows:

"§414D- Notice to the attorney general of intention to dissolve. (a) A public benefit corporation shall give the attorney general written notice that it intends to dissolve before the time it delivers the articles of dissolution to the director. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) to the attorney general or until the attorney general has consented in writing to the dissolution, or indicated in writing that the attorney general will take no action in respect to, the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those (other than creditors) to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person (other than creditors) who received assets and indicate what assets each received."

SECTION 4. Section 414D-14, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Public benefit corporation” means any corporation designated by statute as a public benefit corporation, or any corporation that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or that is organized for public or charitable purposes and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.”

SECTION 5. Section 414D-54, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The

proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative[;], or in the case of a public benefit corporation, by the attorney general.”

SECTION 6. Section 414D-90, Hawaii Revised Statutes, is amended to read as follows:

“**[§414D-90] Derivative suits.** (a) A proceeding may be brought on behalf of a domestic or foreign corporation to procure a judgment in its favor by any member or members having five per cent or more of the voting power, or by fifty members, whichever is less, or any director.

(b) In any such proceeding, each complainant shall be a member or director at the time the proceeding is initiated.

(c) A complaint in a proceeding brought on behalf of a corporation shall be verified and allege with particularity the demand made, if any, to obtain action by the directors, and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation’s investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(d) On termination of the proceeding, the court may require the complainants to pay any defendant’s reasonable expenses (including counsel fees) incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(e) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise is successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise, or settlement of an action or claim, the court may award the complainants reasonable expenses (including counsel fees).

(f) The complainants shall notify the attorney general within ten days after commencing any proceeding under this section if the proceeding involves a public benefit corporation.”

SECTION 7. Section 414D-140, Hawaii Revised Statutes, is amended to read as follows:

“**[§414D-140] Removal of directors by judicial proceeding.** (a) The circuit court of the county where a corporation’s principal office is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or its members holding at least ten per cent of the voting power of any class, or the attorney general in the case of a public benefit corporation, if the court finds that with respect to the corporation, the director’s removal is in the best interest of the corporation due to:

- (1) The director’s fraudulent or dishonest conduct;
- (2) The director’s gross abuse of authority or discretion; or
- (3) A final judgment finding that the director has violated a duty set forth in sections 414D-149 and 414D-152, and that removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) If members or the attorney general commence a proceeding under subsection (a), the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a), within ten days of its commencement, they shall give the attorney general written notice of the proceeding.”

SECTION 8. Section 414D-150, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A transaction in which a director has a conflict of interest may be approved if:

- (1) In the case of a public benefit corporation, the transaction is approved by the attorney general, before or after the transaction is consummated;
- [4] (2) The material facts of the transaction and the director’s interest were disclosed or known to the board of directors or a committee of the board and the transaction was authorized, approved, or ratified by the board or committee of the board; or
- [2] (3) The material facts of the transaction and the director’s interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.”

SECTION 9. Section 414D-222, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414D-222[] Sale of assets other than in regular course of activities.**

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation’s board if the proposed transaction is authorized by subsection (b).

(b) Unless this chapter, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (d)) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

- (1) By the board;
- (2) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 414D-188 for an amendment to the articles or bylaws.

(c) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors’ meeting at which the approval is to be obtained in accordance with section 414D-145(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 414D-105. The notice ~~[must]~~ shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights), without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

(h) A sale, lease, exchange, or other disposition of the property of a corporation shall not be deemed to be the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation if the corporation is retaining sufficient property to continue one or more significant business segments or lines of the corporation after the sale, lease, exchange, or other disposition. Furthermore, the business segments or lines retained must not be only temporary operations or merely a pretext to avoid members' rights which might otherwise arise under this chapter.

(i) A public benefit corporation shall give written notice to the attorney general twenty days before it sells, leases, exchanges, or otherwise disposes of all, or substantially all, of its property if the transaction is not in the regular course of its activities, unless the attorney general has given the corporation a written waiver of this subsection."

SECTION 10. Section 414D-245, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (1) Preserving and protecting its assets and minimizing its liabilities;
- (2) Discharging or making provision for discharging its liabilities and obligations;
- (3) Disposing of its properties that will not be distributed in kind;
- (4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
- (5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
- (6) If the corporation is a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, or transferring, subject to any contractual or legal requirement, its assets to [its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and] one or more persons described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit corporations;
- (7) If the corporation is not a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and
- [(7)] (8) Doing every other act necessary to wind up and liquidate its assets and affairs."

SECTION 11. Section 414D-252, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The court may dissolve a corporation in a proceeding by the attorney general if it is established that [the];

- (1) The corporation obtained its articles of incorporation through fraud [or the];
- (2) The corporation has continued to exceed or abuse the authority conferred upon it by law[-];
- (3) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or
- (4) The corporation is a public benefit corporation and is no longer able to carry out its activities.”

SECTION 12. Section 414D-253, Hawaii Revised Statutes, is amended to read as follows:

“§414D-253 Procedure for judicial dissolution. (a) Venue for a proceeding by the attorney general to dissolve a corporation shall be in the circuit court[-] for the first circuit. Venue for a proceeding brought by any other party named in section 414D-252 shall be in the county where a corporation’s principal office (or, if none in this State, its registered office) is or was last located.

(b) Directors or members shall not be deemed necessary parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit corporation, within ten days of its commencement, shall give written notice of the proceeding to the attorney general.”

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 14. This Act shall take effect upon its approval.

(Approved July 6, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 172

S.B. NO. 3049

A Bill for an Act Relating to Charitable Annuities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:1-204, Hawaii Revised Statutes, is amended to read as follows:

“§431:1-204 Life insurance defined. (a) Life insurance is insurance on human lives and insurance appertaining thereto or connected therewith.

(b) For the purposes of this code, the transacting of life insurance includes ~~[the granting of annuities and endowment benefits, except for annuities which are provided by a nonprofit organization or a nonprofit educational foundation for a public educational institution under a charitable gift annuity agreement with a donor;] contracting to provide additional benefits in the event of death or dismemberment by accident or accidental means[-; additional benefits in event of], or in the~~

case of total and permanent disability of the insured[; and], further includes effecting optional modes of settlement of proceeds.

[For purposes of this section, "charitable gift annuity agreement" means a contract under which an individual transfers property to a charity, conditioned upon the right to receive a specific sum of money for life.

For the purposes of this section, a "nonprofit organization" means an organization that meets all of the following requirements:

- (1) Has been granted tax exempt status as a charitable organization by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) Has conducted business in the State continuously for at least ten years;
- (3) Has a net worth in the State of not less than \$5,000,000;
- (4) Maintains a separate annuity fund with at least one-half of the value of the annuity; and
- (5) Has filed a statement on forms that may be prescribed by the department of commerce and consumer affairs which certify compliance with this section; provided that the statement shall be filed on an annual basis in accordance with rules adopted by the department of commerce and consumer affairs.]

(c) For the purposes of this code, the transacting of life insurance includes the granting of annuities and endowment benefits, except for annuities that are provided under a charitable gift annuity agreement with a donor and issued by a nonprofit educational foundation or a nonprofit organization that has met the requirements of paragraphs (1) to (4).

A nonprofit educational foundation or nonprofit organization issuing charitable gift annuities shall:

- (1) Meet the following requirements:
 - (A) The foundation or organization shall have conducted business in the State continuously for at least ten years;
 - (B) The foundation or organization shall maintain a net worth in the State of not less than \$200,000 in cash, cash equivalents or publicly traded securities, exclusive of the assets funding any annuity; and
 - (C) The foundation or organization shall have filed an annual statement that certifies compliance with this subsection, on forms that may be prescribed by the department of the attorney general;
- (2) Maintain segregated assets in a financial institution equal to at least the sum of the reserves on its outstanding charitable gift annuity agreements, calculated in accordance with accepted actuarial standards, and a surplus of ten per cent of the reserves or the amount of \$100,000, whichever is higher. The assets shall be segregated as separate and distinct funds independent of all other funds and shall not be applied toward the payment of the debts and obligations of the foundation or organization, other than with respect to the annuity agreements. The segregated assets shall not be considered in determining whether the foundation or organization meets the net worth requirement of paragraph (1)(B). In determining the fund reserves, a deduction shall be made for all or any portion of an annuity risk that is lawfully reinsured by an authorized reinsurer;
- (3) Invest and manage assets as would a prudent investor, taking into account the purposes, terms, and distribution requirements expressed in its governing instrument. To satisfy this standard, the fiduciary shall exercise reasonable care, skill, and caution; and

- (4) Prominently state on the first page of a charitable gift annuity agreement that the agreement is not insurance under the laws of the State, is not subject to regulation by the insurance division, and is not protected by any state guaranty fund.

Upon the failure of a nonprofit educational foundation or nonprofit organization to comply with any of the requirements of paragraphs (1) to (4), a charitable gift annuity agreement issued by the foundation or organization shall be deemed life insurance and subject to the provisions of this code governing life insurance.

For the purposes of this subsection:

“Charitable gift annuity agreement” means a contract under which an individual transfers property to a charity, conditioned upon the right to receive a specific sum of money for life.

“Nonprofit organization” means an organization that has been granted tax exempt status as a charitable organization by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved July 6, 2004.)

ACT 173

S.B. NO. 2948

A Bill for an Act Relating to Public Health Nursing Services.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. In 1923, the department of health established the public health nursing services program to provide communicable disease control, infant welfare services, and nutrition services. Public health nursing services have included home visitation to monitor and follow up on health conditions and to conduct screening and assessments of children for early identification of health and developmental problems and intervention. The public health nursing services program is prominently involved in the provision of services in the prevention and control of communicable diseases, immunization activities, and the immediate response to epidemics and other catastrophic disasters and traumatic emergency events in the community.

Public health nurses have the clinical experience to monitor, anticipate, and respond to public health problems in communities regardless of the disease or threat. The program targets care coordination services to the most vulnerable populations, including special needs infants, toddlers, children with complex medical conditions, the elderly, and other populations who have difficulty accessing the health care system. The public health nursing services program has extensive experience in collaboration, coordination, transition, and family involvement in meeting the needs of vulnerable populations.

The purpose of this Act is to establish statutorily the public health nursing services program and the roles and functions of the program in the delivery of direct clinical nursing services to the people of Hawaii.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- **Public health nursing services program.** (a) There is established within the department of health a public health nursing services program. At the discretion of the director of health, the program may provide services, including but not limited to the following:

- (1) Mobilizing the department’s nursing resources and responding to catastrophic and traumatic emergency events, including natural disasters and biologic outbreaks or exposures;
- (2) Responding to communicable disease, epidemic, and other public health disease outbreaks;
- (3) Providing care coordination services to the most vulnerable populations of special needs infants, toddlers, and children with complex medical conditions, including medically fragile children, as well as the elderly and other populations who have difficulty accessing the health care system;
- (4) Collaborating with the department of education and the Hawaii chapter of the American Academy of Pediatrics in providing school health services to address the medical and health conditions of public school students that affect their learning;
- (5) Developing collaborative partnerships with individuals, families, communities, and providers to improve the health of families and communities through the assessment of community health needs, the setting of priorities, and policy development;
- (6) Collecting and evaluating data to determine family and community health needs for nursing and health service delivery changes to enhance the quality of life for families; and
- (7) Providing other health care related services as determined appropriate based on community health needs.

(b) Provision of services by the public health nursing services program shall be limited by and subject to the availability of funds.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 6, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 174

H.B. NO. 2459

A Bill for an Act Relating to Public Assistance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that there is a need to clarify that public assistance benefits are not personal injury protection benefits for purposes of the covered loss deductible under section 431:10C-301.5, Hawaii Revised Statutes.

While the medicaid program provides medical assistance to the needy of our community, by congressional mandate, the program and its participants are required to seek reimbursement of medical assistance from all individuals or entities responsible for payment. Additionally, as a precondition to eligibility, all recipients of medical assistance are required to assign their rights to benefits in these cases. The

federal share of the reimbursable assistance cost is owed to the federal government if the money could have been recovered.

Under the current law, the covered loss deductible reduces the recovery for bodily injury. When the covered loss deductible has been applied to reduce the recovery so that the federal share cannot be fully reimbursed, the State owes to the federal government the amount that could have been collected if the covered loss deductible had not been allowed by state law. The current law also has the effect of penalizing the recipients of public assistance by requiring that they reimburse the state and federal government for the public assistance they received while allowing the defense insurance company to evade reimbursement, thereby creating a situation where the recipient is in effect paying twice.

The purpose of this Act is to clarify that the covered loss deductible does not include public assistance benefits.

SECTION 2. Section 431:10C-301.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-301.5 Covered loss deductible. Whenever a person effects a recovery for bodily injury, whether by suit, arbitration, or settlement, and it is determined that the person is entitled to recover damages, the judgment, settlement, or award shall be reduced by \$5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit. The covered loss deductible shall not include benefits paid or incurred under any optional additional coverage[-] or benefits paid under any public assistance program.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved July 6, 2004.)

ACT 175

S.B. NO. 2895

A Bill for an Act Relating to Pest Control.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 460J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§460J- Requirements to maintain license. (a) A licensed pest control operator shall have and maintain in full force and effect the following:

- (1) Workers' compensation insurance, unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386; and
- (2) Liability insurance from an insurance company or agency for comprehensive personal injury and property damage liability in an amount prescribed by the board through its rules.

(b) Failure, refusal, or neglect of any licensed pest control operator to maintain in full force and effect the required workers' compensation insurance or liability insurance shall cause the automatic forfeiture of the license of the pest

control operator effective as of the date of expiration or cancellation of the pest control operator's workers' compensation insurance or liability insurance.

(c) The pest control operator shall immediately notify the board of termination or cancellation of any insurance required under the chapter. Failure to notify the board shall subject the licensee to discipline pursuant to section 460J-15.

(d) The board shall not restore the forfeited license until satisfactory proof of continuous or replacement insurance coverage is submitted to the board as required by this section.

(e) Failure to submit proof of continuous or replacement coverage required by subsection (d) within sixty days after the date of forfeiture shall result in the forfeiture of all fees and shall require the person to apply as a new applicant.

(f) A licensee, within sixty days after receipt of the notification of the forfeiture, may request an administrative hearing to review the forfeiture pursuant to chapter 91. A request for an administrative hearing shall not stay or affect the provisions of subsections (d) and (e)."

SECTION 2. Section 460J-3, Hawaii Revised Statutes, is amended to read as follows:

"§460J-3 Powers and duties of board. In addition to any other powers and duties authorized by law, the board shall:

- (1) Grant licenses to operators pursuant to this chapter;
- (2) Adopt, amend, or repeal rules as it may deem necessary to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All rules shall be adopted pursuant to chapter 91. The rules shall:
 - (A) Forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter;
 - (B) Require operators to make reports to the board containing items of information that will enable the board to improve the enforcement of this chapter and its rules to fully effectuate the purposes of this chapter;
 - (C) Require operators to furnish reports to owners containing matters of information as the board deems necessary to promote the purpose of this chapter;
 - (D) Require liability and workers' compensation insurance verification for license renewals; and
 - (E) Provide for the development of an enforcement information reporting system;
- (3) Enforce this chapter and rules adopted pursuant thereto;
- (4) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause that would be grounds for revocation or suspension of a license; and
- (5) Direct the executive secretary to publish and distribute pamphlets and circulars containing information as it deems proper to further the accomplishment of the purpose of this chapter."

SECTION 3. Section 460J-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew any license issued hereunder, for any cause authorized by law, including but not limited to the following:

- (1) Departure from, or disregard of, plans or specifications in the performance of pest control work in any material respect, without consent of the owner or the owner's authorized representative;
- (2) Violation of any law of the State or any county relating to building, pesticide use, safety, or labor, including violation of any applicable law or rule of the departments of agriculture, health, or labor and industrial relations;
- (3) Misrepresentation of a material fact by the applicant in obtaining a license;
- (4) Failure on the part of a licensee to complete any operation or construction repairs for the price stated in the contract for the operation or construction repairs or in any modification of the contract;
- (5) Failure to comply with this chapter, or any rule adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for termites;
- (6) The commission of any grossly negligent or fraudulent act by the licensee as an operator;
- (7) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (8) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work relating to any infestation or infection of termites found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by termites whether or not a report was made pursuant to sections 460J-19 and 460J-20;
- (9) Failure of an operator to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than two years after completion of any work or operation for the control of termites;
- (10) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the operator's operations as an operator when the operator has the ability to pay or when the operator has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (11) The false denial of any debt due or the validity of the claim therefor with intent to secure for the licensee, the licensee's employer, or other person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (12) Failure to secure or maintain liability insurance or workers' compensation insurance when not authorized to act as a self-insurer under chapter 386, or when not excluded from the requirements of chapter 386;
- (13) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter; or
- (14) Conviction of any offense described in chapter 708 committed while in the performance of the person's regular occupation as a pest control operator."

SECTION 4. Section 460J-25, Hawaii Revised Statutes, is amended to read as follows:

"§460J-25 Insurance. No person shall engage in the business of pest control unless the person has filed with the ~~[director of commerce and consumer~~

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affairs] board a general liability and workers' compensation insurance policy approved by the [director] board in an amount prescribed by the board through its rules; provided that no employee of any company need have such policy in effect with respect to work covered by a policy of the company by which the employee is employed. This section shall not apply to vault fumigation."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved July 6, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 176

S.B. NO. 3175

A Bill for an Act Relating to Federal Social Security for Public Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The state agency may modify the agreement entered into under section 88-212, Hawaii Revised Statutes (HRS), to extend the provisions of Title XVIII and sections 226 and 226A of Title II of the Social Security Act to employees of the Center for Cultural and Technical Interchange Between East and West, Inc. who are described in title 42, United States Code, section 418(n) with respect to services specified in the agreement which constitute "employment" as defined in section 88-211, Hawaii Revised Statutes.

SECTION 2. The Center for Cultural and Technical Interchange Between East and West, Inc. (Center), a Hawaii educational nonprofit public corporation, may submit for approval by the state agency a plan for extending the benefits of Title XVIII of the Social Security Act, in conformity with applicable provisions of the Social Security Act, to employees of the Center. Each plan and any amendment thereof shall be approved by the state agency if it finds that the plan, or the plan as amended, conforms with such requirements provided in regulations of the state agency, except that no plan shall be approved unless the plan:

- (1) Conforms with the requirements of the Social Security Act and with the agreement entered into under section 88-212, HRS;
- (2) Provides that all services that constitute employment as defined in section 88-211, HRS, and are performed in the employ of the Center by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3) of the Social Security Act is applicable;
- (3) Specifies the source or sources from which the funds necessary to make the payments required by sections 88-221 and 88-223, HRS, are expected to be derived and contains reasonable assurance that the sources will be adequate for the purpose;
- (4) Provides for such methods of administration of the plan by the Center as are found by the state agency to be necessary for the proper and efficient administration of the plan;
- (5) Provides that the Center shall make such reports, in such form and containing such information, as the state agency may from time to time

- require, and comply with such provisions as the state agency or the Secretary of Health and Human Services may from time to time find necessary to assure the correctness and verification of the reports; and
- (6) Authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in the plan, the termination to take effect at the expiration of the notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

SECTION 3. The Center for Cultural and Technical Interchange Between East and West, Inc., shall reimburse all appropriate agencies for costs incurred to implement this Act as it applies to the corporation.

SECTION 4. The definitions in section 88-211, Hawaii Revised Statutes, shall apply to this Act.

SECTION 5. Chapter 88, Part VI, HRS, is amended by substituting the phrase "Health and Human Services" or like terms, wherever the phrase "Health, Education, and Welfare", or like terms appear, as the context requires.

SECTION 6. This Act shall take effect on July 1, 2004.

(Approved July 7, 2004.)

ACT 177

S.B. NO. 3018

A Bill for an Act Relating to Pension and Retirement Systems.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

"§88-74 Allowance on service retirement. Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained age fifty-five, a retirement allowance of two per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member; provided that:
 - (A) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
 - (B) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
 - (C) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to

- retirement is credited service as an investigator of the department of the attorney general;
- (D) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
 - (E) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer;
 - (F) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety investigations staff investigator; ~~and~~
 - (G) After June 30, 2002, if the member ~~[has]~~:
 - (i) ~~Has~~ at least ten years of credited service as a firefighter~~[-and is];~~
 - (ii) ~~Is~~ deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician~~[-]; and [continues]~~
 - (iii) ~~Continues~~ employment in a class A or B position other than a firefighter; ~~and~~
 - (H) After June 30, 2004, if the member:
 - (i) ~~Has~~ at least ten years of credited service as a police officer;
 - (ii) ~~Is~~ deemed permanently medically disqualified due to a service related disability to be a police officer by the employer's physician; ~~and~~
 - (iii) ~~Continues~~ employment in a class A or B position other than a police officer;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for a refund as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest;
- (3) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

- (A) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
- (B) For a member who first earned credited service as a judge after June 30, 1999, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
- (C) For a judge with other credited service, as provided in paragraphs (1) and (2). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
- (D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph (4).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraphs (A) and (B) and the portion of the accumulated contributions specified in the subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or

- (4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:
 - (A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and
 - (B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
 - (C) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
 - (i) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the mem-

- ber's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
- (ii) For a member who first earned credited service as a judge after June 30, 1999, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; and
 - (D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section 88-81(e)(4) shall be multiplied by two per cent, two and one-half per cent, or one and one-quarter per cent, as applicable to the credited service earned as a class A, B, or C member, respectively. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(e) (1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved July 7, 2004.)

ACT 178

S.B. NO. 3106

A Bill for an Act Relating to Counties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that allowing counties to require part-time, temporary, and seasonal or casual employees to participate in deferred com-

pensation plans would save the counties significant amounts of money. To implement these plans, the legislature further finds that allowing counties to enter into an agreement with the State to extend the State's existing program to the counties would expedite and facilitate the implementation of the county plans.

The purpose of this Act is to allow counties to require mandatory participation in deferred compensation plans for part-time, temporary, and seasonal or casual employees, to be a part of the State's existing plans.

SECTION 2. Section 88F-2, Hawaii Revised Statutes, is amended to read as follows:

“[§88F-2] State deferred compensation retirement plan for state and county part-time, temporary, and seasonal or casual employees. The State may establish a deferred compensation retirement plan in accordance with sections 457 and 3121 of the Internal Revenue Code of 1986, as amended, for the benefit of employees to defer a portion of their compensation to a future period of time. Participation in the plan shall be mandatory, with a mandatory payroll deduction by the employee equal to seven and five-tenths per cent of the employee's gross monthly wages, which shall be contributed to the plan. A county may enter into a formal agreement with the State to extend the State's plan and its provisions to part-time, temporary, and seasonal or casual employees of the county; provided that:

- (1) The agreement designates one of the county's agencies to locally coordinate the plan; and
- (2) The department of human resources development may levy fees on the county pursuant to rules adopted in accordance with chapter 91.”

SECTION 3. Section 88F-12, Hawaii Revised Statutes, is amended to read as follows:

“[§88F-12] County deferred compensation retirement plan for part-time, temporary, and seasonal or casual employees. ~~[The counties]~~ A county may enter into a formal agreement with the State to extend the State's deferred compensation retirement plan and its provisions to part-time, temporary, and seasonal or casual employees of the county or establish a deferred compensation retirement plan independently in accordance with sections 457 and 3121 of the Internal Revenue Code of 1986, as amended, for their respective part-time, temporary, and seasonal or casual employees. A plan so established under this section need not be subject to the other provisions of this chapter, but shall be in compliance with applicable federal laws and regulations. A plan established by a county under this section shall be the sole responsibility of and administered by that county. The board shall not be responsible or liable for any county plan~~[-]~~ established under this section.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 7, 2004.)

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . RETIREMENT FOR CLASS H PUBLIC OFFICERS
AND EMPLOYEES**

A. Applicability of Part II

§88-A Applicability. The following provisions of part II of this chapter shall apply to this part:

- (1) Subpart A;
- (2) Subpart B, except sections 88-45, 88-46, 88-52, 88-59, 88-59.5, 88-59.6, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71 to 88-76, 88-79, 88-80, 88-83, 88-84, 88-85, 88-88, 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D; and
- (5) Subpart E.

B. Definitions

§88-B Definitions. The following words and phrases as used in this part shall have the following meanings, unless a different meaning is plainly required by the context:

“Actuarial cost” means the actuarial present value, at the date of valuation, of the increase in the retirement allowance that would be attributable to the years of service being converted to class H credited service. The actuarial present value shall be based on rates and tables recommended by the actuary and adopted by the board.

“Board” means the board of trustees of the employees’ retirement system established pursuant to sections 82-83 and 88-24.

“Class A credited service” means credited service as a class A member, excluding any service converted to class H credited service pursuant to section 88-D(b).

“Class B credited service” means credited service as a class B member, excluding any service converted to class H credited service pursuant to section 88-D(b).

“Class C credited service” means credited service as a class C member, excluding any service converted to class H credited service pursuant to section 88-D(a).

“Class H credited service” means credited service as a class H member, including service described in section 88-E.

“Hypothetical account balance” means the sum of:

- (1) One and one-half times the sum of:
 - (A) Employee contributions made, either by the member or on behalf of the member, pursuant to section 88-G; and
 - (B) Accumulated interest at the regular interest rate on the employee contributions; and
- (2) Any employee contributions, including rollovers and contributions used to convert credited service to class H credited service, or used to

purchase service, and accumulated interest on the employee contributions at the regular interest rate.

C. Membership, Credited Service

§88-C Election and membership. (a) Any member, except for members described in subsection (c), who is in service on June 30, 2006, or who returns to service after June 30, 2006, and has vested benefit status in accordance with section 88-96(b), may elect to become a class H member effective July 1, 2006, or upon return to service, by filing an election form with the system in accordance with this section. The election shall be made prior to April 1, 2006, by members in service on February 28, 2006. The election shall be made by members entering or returning to service after February 28, 2006, within thirty days of entering or returning to service. The election shall be irrevocable.

(b) Notwithstanding any other law to the contrary, after June 30, 2006:

- (1) A class C member who returns to service and who does not return to service as a class A or a class B member shall become a class H member upon return to service; and
- (2) A class A or a class B member, who returns to service but does not have vested benefit status as provided in section 88-96(b) and who does not return to service as a class A or class B member, shall become a class H member upon return to service. The system shall return to the member the member's accumulated contributions and the member's credited service as a class A or B member shall be converted to class C credited service.

(c) The following members may not elect to become a class H member under subsection (a):

- (1) Judges, elected officials, and legislative officers;
- (2) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators;
- (3) Police officers and firefighters;
- (4) All employees who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
- (5) Former class A, B, or C retirants.

§88-D Conversion of previous credited service. (a) Class C members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-C(a), shall have the option to convert some or all of their class C credited service to class H credited service by paying the full actuarial cost of the conversion as of June 30, 2006, in the manner provided in subsection (e). The option to convert class C credited service to class H credited service shall not apply:

- (1) To forfeited credit for previous service not restored as of June 30, 2006; or
- (2) To membership service credit which a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006, which the member has failed to claim as of June 30, 2006.

(b) All class A and class B credited service of class A or class B members who make the election to become class H members pursuant to section 88-C(a) shall be converted to class H credited service. The cost of the conversion of class A or class B credited service shall be the member's accumulated contributions as of the date of conversion. Class A and class B members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-C(a)

shall have the option to convert some or all of their class C credited service to class H credited service by paying, in the manner provided in subsection (e), the full actuarial cost of the conversion as of June 30, 2006. The option to convert class C credited service to class H credited service shall not apply:

- (1) To forfeited credit for previous service not restored as of June 30, 2006; or
- (2) To membership service credit which a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006, which the member has failed to claim as of June 30, 2006.

(c) The election to convert class C credited service to class H credited service shall be made by filing a form with the system within one hundred eighty days after publication of the notice required by subsection (f). The board may, by action taken at a meeting held pursuant to chapter 92, extend the deadline for making the election.

(d) Forfeited credit for service as a class A or B member not restored as of the date a class A or B member becomes a class H member and forfeited credit for service as a class C member shall be restored as class C credited service at the rate of one month of service credit for each month of service rendered following the return to membership.

(e) The board may permit the cost of conversion of class C credited service to class H credited service pursuant to subsections (a) or (b) to be paid by the member in any one of the following methods at the member's option:

- (1) By deductions from the member's compensation pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-H. An irrevocable payroll authorization filed by the member for a period not to exceed one hundred twenty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of the deductions shall be in an amount sufficient to amortize the actuarial cost of the conversion, together with interest at the rate of eight per cent a year, in level bi-monthly payments over the period specified in the irrevocable authorization. Service credited will be proportional on the basis of whole months. For example, a member electing to convert one hundred twenty months of service over sixty months and terminating after thirty and one-half months of deductions pursuant to this subsection, will have converted sixty months of class C service to class H service; or
- (2) By lump sum payment.

If the deductions from compensation do not commence, or if the lump sum payment is not paid to the system, within one hundred eighty days after the deadline for making the election to convert class C credited service to class H credited service, the election shall be deemed revoked. The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of the member's accumulated contributions.

(f) The option to convert class C credited service to class H credited service pursuant to this section shall be applicable only to the extent that such conversion may be achieved without affecting the eligibility of the system as a qualified plan under section 401(a) of the federal Internal Revenue Code of 1986, as amended, or the eligibility of the employer pick up under section 414(h)(2) of the federal Internal Revenue Code of 1986, as amended. If the trustees determine that the conditions of the foregoing sentence are satisfied, the system shall publish a statewide notice that class H members who are eligible to convert class C credited service to class H credited service under this section, subject to the provisions of this section, may convert class C credited service to class H credited service.

§88-E Class H credited service. Class H credited service includes:

- (1) Service by an employee rendered since becoming a class H member;
- (2) Service credited under part II as a class A member or a class B member and converted to class H credited service pursuant to section 88-D(b);
- (3) Service credited under part VII as a class C member and converted to class H credited service pursuant to section 88-D(a);
- (4) Service in the armed forces as provided by subpart E of part II;
- (5) Mandatory maternity leave as provided in part II; and
- (6) Unused sick leave as provided in section 88-63; provided that any additional service credit shall not be used in determining eligibility for retirement or for any other purpose as a class H member.

§88-F Acquisition of membership service. (a) Under rules as the board may adopt, any class H member may file with the system a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member last becoming a member which is not credited to the member, for which the member claims prior service credit, and also a statement of the services for which the member claims membership service credit and, except as provided in subsection (d) or with respect to forfeited service to which subsection (c) is applicable, for which the member agrees to have additional deductions made from the member's compensation or to make a lump sum payment as described in this section.

Upon timely filing of the statement by the member, the system shall verify the service claimed and determine the service credit allowable.

- (b) The statement shall be filed no later than the later of the following:
 - (1) One year following the date the member becomes eligible to claim the prior service credit or membership service credit;
 - (2) June 30, 2007, if the member was in service on June 30, 2006; or
 - (3) One year from the date the member first returns to service after June 30, 2006, if the member was not in service on June 30, 2006.
- (c) Except as otherwise provided in subsection (d), verified membership service, other than forfeited class A, class B, class C, or class H credited service, shall be paid for in any one of the following methods, at the member's option:
 - (1) By deductions from the member's compensation pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-H. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of service credit that may be acquired pursuant to this method shall not exceed the period over which the payroll payments are made. The member may elect to have:
 - (A) Deductions from the member's compensation of twice the contribution rate provided for in section 88-G over a period equal to the period for which membership service credit is allowable not to exceed sixty months; or
 - (B) Deductions from the member's compensation of one and one-half times the contribution rate provided for in section 88-G over a period equal to twice the period for which membership service credit is allowable, not to exceed sixty months; or
 - (2) By lump sum payment of contributions computed at the contribution rate provided for in section 88-G applied to the member's monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable.

The deductions from compensation shall commence, and the lump sum payment shall be made, not later than ninety days from the date the system notifies the member of the amount of service credit allowable. The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of the member's accumulated contributions.

Class H membership service credit in addition to any other service credited to the member shall be allowed for the period for which the deductions from compensation or lump sum payment have been made in accordance with this subsection.

(d) Verified membership credit for which a former class C member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim prior to the date specified in section 88-D(a) and (b), shall be credited at no cost as class C credited service.

(e) Forfeited class A, class B, or class C credited service shall not be acquired as class H credited service. Forfeited class A, class B, or class C credited service shall be restored as class C credited service at the rate of one month of service credit for each month of service rendered following the later of conversion to class H membership or the return to membership as a class H member. Forfeited class H membership service shall not be restored.

§88-G Employee contributions. Each class H member shall contribute six per cent of the member's compensation to the annuity savings fund; provided that each sewer worker, water safety officer, and emergency medical technician who is a class H member shall contribute nine and seventy-five one-hundredths per cent of the member's compensation to the annuity savings fund for service in that capacity.

§88-H Deducting employee contributions from salary and employer pick up of employee contributions. (a) The head of each state department and the finance director of each county shall deduct from the compensation of each class H member on each and every payroll under their respective jurisdictions, the percentage of compensation of each member as provided under section 88-G.

The total amount of deductions made from the salaries of employees and a record of the amount deducted from each member's compensation shall be transmitted to the system semi-monthly or at other times as may be agreed upon by the board. The amounts deducted shall be paid into the annuity savings fund and shall be credited to the individual account of the member from whose compensation the deductions were made.

Regular interest shall also be credited to the individual account of the member in the annuity savings fund.

(b) The State and each county, pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, shall pick up and pay the contributions that would otherwise be payable by each class H member, including contributions designated by the member relating to the conversion or acquisition of membership service as provided under sections 88-D(e) and 88-F, from compensation paid after December 31, 1987. The contributions so picked up shall be treated as employer contributions for the purpose of determining the amount of federal income tax to withhold from each class H member's compensation. The member shall complete a payroll authorization form before the period in which the contributions are earned and service is acquired, converted, or credited. With respect to service to be acquired or converted, the form shall be a binding irrevocable payroll deduction authorization in which the member acknowledges that the system will not accept direct payment from the member while the form is in effect.

(c) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each class H member's compensation equal to the amount of the member's contributions picked up by the employer; provided that the deduction shall not reduce the member's compensation for the purpose of computing benefits under this chapter.

(d) Member contributions picked up by the employer shall be transmitted to the system in accordance with subsection (a). Such contributions shall be credited to a separate account within each member's individual account in the annuity savings fund so that the amount contributed by the member before January 1, 1988, may be distinguished from the member contributions picked up by the employer. Regular interest shall also be credited to the individual account of the member in the annuity savings fund.

D. Eligibility; Benefits

§88-I Service retirement. (a) A class H member who has five years of credited service and has attained age sixty-two, or a class H member with thirty years credited service who has attained the age of fifty-five shall become eligible to receive a retirement allowance after the member has terminated service.

(b) A class H member who has at least twenty-five years of credited service as a sewer worker or water safety officer, of which the last five or more years prior to retirement is credited service in that capacity, shall become eligible to receive a retirement allowance unreduced for age after the member has terminated service.

(c) A class H member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) If a class H member has at least twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, the member shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(e) A class H member may retire upon the written application to the system, specifying the desired date of retirement, which shall be not less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

§88-J Service retirement allowance. Upon retirement from service, a class H member shall receive a retirement allowance as follows:

- (1) If the member has met the requirements in section 88-I(a), (b), or (d), a maximum retirement allowance of two per cent of the average final compensation multiplied by the number of years of class H credited service, plus a retirement allowance at the rate of one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service; or
- (2) If the member has met the requirements in section 88-I(c), an early retirement allowance equal to the maximum retirement allowance calculated as provided in paragraph (1), reduced by 0.4166 per cent for each month the member is less than age sixty-two at retirement.

§88-K Retirement allowance options. (a) Upon retirement:

- (1) Any class H member may elect to receive the maximum retirement allowance to which the member is entitled, computed in accordance with the provisions described under section 88-J, 88-M, or 88-O, and if the member elects to receive the maximum retirement allowance, in the event of the member's death, there shall be paid to the member's beneficiary, or otherwise to the member's estate, the difference between the balance of the member's accumulated contributions at the time of the member's retirement and the retirement allowance paid or payable to the member prior to death; or
- (2) In lieu of the maximum allowance to which the member is entitled, computed in accordance with the provisions described under section 88-J, 88-M, or 88-O, the member may elect to receive the member's retirement allowance under any one of the optional plans described in section 88-83, which shall be actuarially equivalent to the maximum allowance.

To receive benefits, the beneficiary shall have been designated by the member in the form and manner prescribed by the board.

(b) If a class H member dies after the date of the filing of the member's written application to retire but prior to the retirement date designated by the member, the designated beneficiary, or otherwise the personal representative of the member's estate, if the member was eligible to retire on the date of the member's death, may elect to receive either the death benefit under section 88-P or the allowance under the option selected by the member that would have been payable had the member retired. The effective date of the member's retirement shall be a first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member's retirement application was filed or the day following the member's date of death.

(c) If a retirant dies within one year after the date of retirement, the retirant's beneficiary may elect to receive either the death benefit under the retirement allowance option selected by the member, or the benefits that would have been paid under section 88-P had the retirant died immediately prior to retirement, less any payments received by the retirant.

(d) Any election of a mode of retirement allowance shall be irrevocable.

(e) No election under this section shall take effect unless:

- (1) The spouse or reciprocal beneficiary of the member is furnished written notification that:
 - (A) Specifies the retirement date, the benefit option selected, and the beneficiary designated by the member;
 - (B) Provides information indicating the effect of the election; and
 - (C) Is determined adequate by rules adopted by the board in accordance with chapter 91;
- (2) The member selects option 2 or option 3 under section 88-83 and designates the spouse or reciprocal beneficiary as the beneficiary; or
- (3) It is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:
 - (A) There is no spouse or reciprocal beneficiary;
 - (B) The spouse or reciprocal beneficiary cannot be located;
 - (C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary, or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary; or
 - (D) Of other reasons, as established by board rules adopted in accordance with chapter 91.

Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided shall be effective only with respect to that spouse or reciprocal beneficiary. The system shall rely upon the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary. The system shall not be liable for any false statements made by the member.

(f) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:

- (1) The terms and conditions of the various benefit options;
- (2) The rights of the member's spouse or reciprocal beneficiary under subsection (c) to be notified of the member's election of a benefit option; and
- (3) The member's right to make, and the effect of, a revocation of an election of a benefit option.

§88-L Ordinary disability retirement. (a) Upon application of a class H member in service or on leave without pay, or the person appointed by the family court as guardian of an incapacitated member, any member who has ten or more years of credited service shall be retired by the board on an ordinary disability retirement allowance if the medical board, after a medical examination of the member, certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

(b) Upon approval by the board, the member shall receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall become effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

§88-M Ordinary disability retirement allowance. Upon retirement for ordinary disability, a class H member shall receive an ordinary disability retirement allowance equal to the higher of either:

- (1) Two per cent of the average final compensation multiplied by the number of years of class H credited service unreduced for age, plus one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service unreduced for age; or
- (2) Twenty-five per cent of the member's average final compensation.

§88-N Service connected disability retirement. (a) Upon application of a class H member, or the person appointed by the family court as guardian of an incapacitated member, any class H member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on the member's part, may be retired by the board for service-connected disability; provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the system a copy of the employer's report of the accident submitted to the director of labor and industrial relations;

- (2) An application for retirement is filed with the system within two years of the date of the accident, or the date upon which workers' compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of the service performed by the member resulting in the member's disability and that the disability was not the result of wilful negligence on the part of the member; and
- (4) The medical board certifies that the member is incapacitated for the further performance of duty and that the member's incapacity is likely to be permanent.

(b) In the case of sewer workers, the effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the result of some occupational hazard for the purpose of determining occupational disability retirement under this section.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system resulting in permanent incapacity to a sewer worker shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the sewer worker's part, and as a result of the inherent occupational hazard of exposure to the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that the sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition.

(c) The board may waive strict compliance with the time limits within which a report of the accident and an application for service-connected disability retirement must be filed with the board if it is satisfied that the failure to file within the time limited by law was due to ignorance of fact or law, inability, or the fraud, misrepresentation, or deceit of any person, or because the applicant was undergoing treatment for the disability, or was receiving vocational rehabilitation services occasioned by the disability.

(d) The board may determine whether the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

- (1) The certification made by the head of the agency in which the member is employed; or
- (2) A finding to this effect by the medical board.

(e) Upon approval by the board, the member shall be eligible to receive a service-connected disability retirement benefit after the member has terminated service. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

§88-O Service connected disability retirement allowance. Upon retirement for service-connected disability, a class H member shall receive the amount of the member's accumulated contributions and a retirement allowance of thirty-five per cent of the member's average final compensation.

§88-P Ordinary death benefit. (a) Upon receipt by the board of proper proof of a class H member's death occurring in service or while on authorized leave

without pay and if no pension is payable under section 88-Q, there shall be paid to the member's designated beneficiary an ordinary death benefit as follows:

- (1) If the member had less than five years of credited service at the time of death, the member's accumulated contributions shall be paid to the member's designated beneficiary;
 - (2) If the member had five or more years of credited service at the time of death, an amount equal to the member's hypothetical account balance shall be paid to the member's designated beneficiary;
 - (3) If the member had ten or more years of credited service at the time of death, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 3 of section 88-83 and computed on the basis of section 88-M; or
 - (4) If the member was eligible for service retirement at the time of death, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 2 of section 88-83.
- (b) If the member's designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, the death benefit in the case of ordinary death shall be payable:
- (1) To the surviving spouse or reciprocal beneficiary, a benefit as specified under subsection (a);
 - (2) To the deceased member's dependent child, or children under age eighteen if there is no surviving spouse or reciprocal beneficiary, an equally divided benefit as specified under paragraph (1) or (2) of subsection (a); or
 - (3) To the deceased member's estate, if there is no surviving spouse or reciprocal beneficiary or dependent child or children, a benefit as specified under paragraph (1) or (2) of subsection (a).
- (c) For the purposes of this section, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

§88-Q Accidental service connected death benefit. (a) Upon the receipt by the board of trustees, of proper proof of a class H member's death, there shall be paid to the member's designated beneficiary or to the member's estate the amount of the member's accumulated contributions and if, upon the receipt of evidence or proof that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member, there shall be paid in lieu of the ordinary death benefit payable under section 88-P, effective on the first day of a month following the member's death, except for the month of December when

benefits shall be effective on the first or last day of the month, a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship;
- (2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under that age, divided in a manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains that age; or
- (3) If there is no surviving spouse or reciprocal beneficiary or child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no such nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

(b) Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in death to a sewer worker shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that the sewer worker shall have passed a physical examination on entry into service or subsequent to entry, which examination failed to reveal any evidence of the condition.

(c) Benefits payable under subsection (a) shall continue through the end of the month in which the payee ceases to be eligible for the benefit.

§88-R Termination of membership. Except as otherwise provided by section 88-S, any class H member absent from service for four calendar years following the calendar year in which the member's employment terminated shall cease to be a member. Any class H member who withdraws the member's contributions, becomes a retiree, or dies, shall cease to be a member as of the date of withdrawal, retirement, or death.

§88-S Rights of members separated from service. (a) Any class H member who ceases to be an employee and who has fewer than five years of credited service shall, upon application to the board, be paid all of the former employee's accumulated contributions and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that any such individual shall not be paid the individual's accumulated contributions if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for return of accumulated contributions is received by the board the individual has become an employee again.

Regular interest shall be credited to the former employee's account until the former employee's accumulated contributions are withdrawn; provided that the former employee's membership shall not continue after the fourth full year follow-

ing the calendar year in which the individual's employment terminates. If the former employee does not become an employee again and has not withdrawn the former employee's accumulated contributions, the system shall return the former employee's accumulated contributions to the former employee as soon as possible after the former employee attains age sixty-two.

(b) Any class H member having five or more years of credited service who ceases to be an employee, upon application to the board, shall be paid an amount equal to the former employee's hypothetical account balance and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that any such individual shall not be paid the individual's hypothetical account balance if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for payment of the individual's hypothetical account balance is received by the board, the individual has become an employee again.

If the contributions are not withdrawn by the former employee after the individual's employment terminates, the former employee shall have vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the former employee's separation from service, payable in accordance with this chapter.

(c) In case of the death after the termination of service of any former class H member who has not withdrawn the member's contributions, there shall be paid to the former member's estate or to such person as the former member has nominated by written designation duly executed and filed with the board if either:

- (1) The former member had less than five years of credited service at the time of death, the former member's accumulated contributions; or
- (2) The former member had five or more years of credited service at the time of death, the former member's hypothetical account balance.

§88-T Return to service of a former member without vested benefit status. (a) When a former class H member who does not have vested benefit status returns to service, the former member shall become a member in the same manner and under the same conditions as anyone first entering service and, except as provided in subsection (b), to be eligible for any benefit, the member shall fulfill the membership service requirements for the benefit through membership service after again becoming a member in addition to meeting any other eligibility requirement established for the benefit; provided that the membership service requirement shall be exclusive of any former service acquired in accordance with section 88-F or any other section in this part.

(b) When a former class H member who does not have vested benefit status but who did not withdraw the former member's accumulated contributions returns to service, the member shall be credited with service credit for the service the member had when the member terminated employment and the member's new and previous accumulated contributions shall be combined.

§88-U Return to service of a former member who has vested benefit status. If a former class H member who has a vested benefit status as provided in section 88-S(b) returns to service before the former member's retirement, the former member shall again become a member and shall contribute for membership service as provided by the law in effect during the member's reenrolled period of membership, and the former member shall be credited with service credit for the service the member had when the member terminated employment and the member's new and previous accumulated contributions shall be combined.

§88-V Return to service of a retirant. (a) Any retirant who retired under the provisions of part VIII of this chapter and returns to service requiring membership in the system as a class H member shall be reenrolled as an active member, and the retirant's retirement allowance shall be suspended. At such time as the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the mode of retirement selected when the member previously retired and which was suspended; and
- (2) For the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the mode of retirement initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula of a class H member in existence at the time of the member's final retirement.

(b) Any retirant who retired under part VIII and returns to service requiring membership in the system as a class A or class B member shall be reenrolled as an active member, and the retirant's retirement allowance shall be suspended. At such time as the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the mode of retirement selected when the member previously retired and which was suspended; and
- (2) For the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the mode of retirement initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula of a class A or class B member in existence at the time of the member's final retirement.

(c) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, and is reemployed by the State or a county in any capacity shall:

- (1) Have the retirant's retirement allowance suspended;
- (2) Forfeit the special retirement incentive benefit and any related benefit provided by chapter 88; and
- (3) Be subject to the age and service requirements under section 88-I when the member again retires.

The board shall adopt such rules as may be required to administer the purposes of this section."

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding to subpart B of part II a new section to be appropriately designated and to read as follows:

"§88-Z Acceptance of rollovers and transfers from other plans. Subject to rules adopted by the board of trustees, the system shall accept an eligible rollover distribution or a direct transfer of funds from another qualified plan in payment of all or a portion of any deposit a member is permitted to make with the system for credit for service, including the conversion of class C credited service to class H credited service. The rules adopted by the board of trustees shall condition the acceptance of a rollover or transfer from another plan on the receipt from the other plan of information necessary to enable the system to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law."

SECTION 3. Section 88-41, Hawaii Revised Statutes, is amended to read as follows:

“§88-41 Limitation of other statutes. No other provision in any other statute which provides wholly or partly at the expense of the State or any county for pensions or retirement benefits for employees of the State or of any county, their surviving spouses or other dependents shall apply to members, retirants, or beneficiaries of the system established by this part and ~~[part]~~ parts VII and VIII of this chapter, their surviving spouses or other dependents, except such benefits as may be provided under Title II of the Social Security Act.”

SECTION 4. Section 88-46.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon approval of the member’s election, all rights as a class A or class H member shall be extinguished and the member shall:

- (1) Become a class C member;
- (2) Be refunded the member’s contributions; and
- (3) Not be required to make any further contributions.”

SECTION 5. Section 88-47, Hawaii Revised Statutes, is amended to read as follows:

“§88-47 Membership. (a) There shall be ~~[three]~~ four classes of members in the system to be known as class A, class B, ~~[and]~~ class C, and class H, defined as follows:

- (1) Class A shall consist of ~~[members covered by section 88-74(3) and (4), those members whose salaries are set forth in sections 26-52 and 26-53, and their county counterparts, managing directors or administrative assistant to the mayor, and other department heads, including agency heads appointed by the mayor, first deputies appointed by the county attorney and prosecuting attorney, the county clerk and deputy county clerk of each county, the administrative director of the courts, the deputy administrative director of the courts, the executive director of the labor and industrial relations appeals board, the executive director of the Hawaii labor relations board, investigators];~~
 - (A) Judges, elected officials, and legislative officers;
 - (B) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators[~~, and those~~];
 - (C) Those members in service prior to July 1, 1984, including those who are on approved leave of absence, [who are covered by Title II of the Social Security Act on account of service creditable under this part. This class shall consist of:
 - [(A) All employees who enter membership after June 30, 1957, except employees in positions to which coverage under Title II of the Social Security Act is not extended;
 - (B) All employees who were members on July 1, 1957, who elected to be covered by the Social Security Act; and] not making the election to become a class C member as provided in part VII or to become a class H member as provided in part VIII;
 - (D) The following members in service prior to July 1, 2006, including those who are on approved leave of absence, not making the election to become a class H member as provided in part VIII:

members whose salaries are set forth in sections 26-52 and 26-53 and their county counterparts, managing directors or administrative assistants to the mayor and other department heads, including agency heads appointed by the mayor, first deputies appointed by the county attorney and prosecuting attorney, the county clerk and deputy county clerk of each county, the administrative director of the courts, the deputy administrative director of the courts, the executive officer of the labor and industrial relations appeals board, and the executive officer of the Hawaii labor relations board;

- ~~[(C)]~~ (E) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership; and
- (F) All former class B retirants who return to employment requiring the retirant's active membership, except for:
 - (i) Former retirants who return in the positions of police officer or firefighter;
 - (ii) Former retirants who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
 - (iii) Former retirants who were in positions to which coverage under Title II of the Social Security Act was not extended who entered membership after June 30, 1957, but before January 1, 2004;
- (2) Class B shall consist of ~~[the following members]:~~
 - (A) Police officers and firefighters~~[- and]~~, including former retirants who return to service in such capacity;
 - (B) ~~[Employees]~~ All employees, including former retirants, who were members on ~~[June 30,]~~ July 1, 1957, who elected not to be covered by the Social Security Act; and
 - (C) All employees, including former retirants, in positions to which coverage under Title II of the Social Security Act is not extended, who enter membership after June 30, 1957, but before January 1, 2004, not making the election to become a class H member as provided in part VIII;
- (3) Except for members described in paragraphs (1) and (2), class C shall consist of all employees, not making the election to become a class H member as provided in part VIII, who:
 - (A) First enter service after June 30, 1984~~[-];~~ but before July 1, 2006;
 - (B) Reenter service after June 30, 1984, but before July 1, 2006, without vested benefit status as provided in section 88-96(b);
 - (C) Make the election to become a class C member as provided in part VII; or
 - (D) Are former class C retirants who return to service requiring the retirant's active membership~~[-];~~ and
- (4) Except for members described in paragraphs (1) and (2), class H shall consist of all employees who:
 - (A) First enter service after June 30, 2006;
 - (B) Reenter service after June 30, 2006, without vested benefit status as provided in section 88-96(b);
 - (C) Make the election to become a class H member as provided in part VIII; or
 - (D) Are former class H retirants who return to service requiring the retirant's active membership.

(b) None of the provisions of this part shall apply to class C members except as specifically provided in part VII. None of the provisions of this part shall apply to class H members except as specifically provided in part VIII.

SECTION 6. Section 88-50.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§88-50.5] Credit for mandatory maternity leave.** Any member of the system who was required to take mandatory maternity leave prior to July 1, 1973, may be credited up to four years of membership service credit for mandatory maternity leave; provided that the maximum credit for each pregnancy shall be limited to twelve months.

A member's maternity leave shall be considered service in the member's occupation at the time the leave was taken and may be credited in accordance with ~~[section]~~ sections 88-59 ~~[or]~~, 88-272~~[-]~~, and 88-F.

Any retirant, who returns to employment and is reenrolled as a member of the system and who has at least three years of credited service in the system during the period of reemployment, may be credited with membership service credit for maternity leave as provided in this section.”

SECTION 7. Section 88-54.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§88-54.5] Service while a member of the board of trustees of the office of Hawaiian affairs.** Notwithstanding any provisions of section 10-9 that may previously have precluded a member of the board of trustees of the office of Hawaiian affairs from participating as a member of the employees' retirement system:

- (1) Any trustee of the office of Hawaiian affairs in service on July 1, 2002, may become a member upon the trustee's election in accordance with section 88-43 by October 1, 2002;
- (2) Any trustee of the office of Hawaiian affairs elected or appointed after July 1, 2002, may become a member upon the trustee's election in accordance with section 88-43;
- (3) Any service as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through July 1, 2002, if claimed by the member, shall be credited in the member's class at the time the service is acquired; provided that membership service shall be credited in accordance with sections 88-59 ~~[and]~~, 88-272~~[-]~~, and 88-F; and
- (4) Any former trustee of the office of Hawaiian affairs who retired from service prior to July 1, 2002, shall not be entitled to claim membership service as a trustee during the period July 1, 1993, through June 30, 2002.”

SECTION 8. Section 88-55, Hawaii Revised Statutes, is amended to read as follows:

“**§88-55 Services of field civilian personnel of the Hawaii national guard.** Civilian field personnel of the Hawaii national guard are entitled to membership credit for all service performed by them in such capacity since August 1, 1946, upon making application therefor and complying with ~~[section]~~ sections 88-59~~[-]~~ and 88-F; provided that by federal law or regulation a payroll deduction has been made for the contribution required to be made into the system by the employee.

Any of the foregoing to the contrary notwithstanding, any civilian field personnel of the Hawaii national guard who elected to become, and who became, a member of the federal retirement system after December 31, 1968, shall not be entitled to membership credit for the period of time the individual was a member of the federal retirement system, nor shall the individual be entitled to any previous membership service credit for any period of service between August 1, 1946, and December 31, 1968, if the individual is entitled to a benefit under the federal retirement system for such period of service."

SECTION 9. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

"§88-73 Service retirement. (a) Any member who has at least five years of credited service and who has attained age fifty-five or any member who has at least twenty-five years of credited service or any member who has at least ten years of credited service, which includes service as a judge before July 1, 1999, an elective officer, or a legislative officer, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) Any member who first earned credited service as a judge after June 30, 1999, and who has at least five years of credited service and has attained age fifty-five or has at least twenty-five years of credited service shall become eligible to receive a retirement allowance after the member has terminated service.

(c) A member may retire upon the written application specifying the date of retirement, which shall not be less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

~~[(d) In the event of the death of a member after the date of the filing of the member's written application to retire, but prior to the effective date of retirement, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance payable under the option selected by the member; provided that the member meets the eligibility requirements to retire on the member's date of death. The designated beneficiary shall be eligible for a retirement benefit, if any, no earlier than thirty days from the date the application was filed or the day following the member's date of death, whichever is later. Retirement benefits shall be effective on the first day of a month, except for the month of December when benefits shall be effective on the first or last day of the month.]~~

~~[(e)]~~ (d) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position.

~~[(f)]~~ (e) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge makes an election to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of the member's average final compensation, shall be used as the date the member is eligible to receive a service retirement benefit. The elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service. Upon leaving active service, the elective officer or judge shall receive the retirement allowance provided for in section 88-74, together with the post retirement allowances provided for in section 88-90, effective on the first day of a month except the month of December when retirement benefits shall be effective on the first or last day of the month. Post retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day.

~~[(g)]~~ (f) In the case of a class A or B member who also has prior credited service under part VII~~[,]~~ or part VIII, total credited service as a class A, class B, ~~[and] class C, and class H~~ member shall be used to determine the eligibility for retirement allowance.’’

SECTION 10. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

“**§88-74 Allowance on service retirement.** Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained age fifty-five, a retirement allowance of two per cent of the member’s average final compensation multiplied by the total number of years of the member’s credited service as a class A and B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member’s average final compensation multiplied by the total number of years of prior credited service as a class C member~~[,]~~, plus a retirement allowance of two per cent of the member’s average final compensation multiplied by the total number of years of prior credited service as a class H member; provided that:
 - (A) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
 - (B) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
 - (C) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
 - (D) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
 - (E) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer;
 - (F) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety investigations staff investigator; and
 - (G) After June 30, 2002, if the member has at least ten years of credited service as a firefighter, and is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer’s physician, and continues employment in a class A or B position other than a firefighter;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member’s average final compensation. The maximum retirement allowance for those members shall not exceed eighty

per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for a refund as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest;
- (3) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
 - (A) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
 - (B) For a member who first earned credited service as a judge after June 30, 1999, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
 - (C) For a judge with other credited service, as provided in paragraphs (1) and (2). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
 - (D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph (4).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraphs (A) and (B) and the portion of the accumulated contributions specified in the subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or

- (4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:
 - (A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and
 - (B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
 - (C) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
 - (i) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
 - (ii) For a member who first earned credited service as a judge after June 30, 1999, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; and
 - (D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section 88-81(e)(4) shall be multiplied by two per cent~~;~~ for credited service earned as a class A or class H member, two and one-half per cent~~;~~~~or~~ for credited service earned as a class B member, and one and one-quarter per cent~~;~~~~as applicable to the~~ for credited service earned as a class ~~A, B,~~ or C member~~;~~ respectively]. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(e)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of

the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3)."

SECTION 11. Section 88-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If, in the event of an appeal of a decision of the medical board, retirement benefits are awarded to a member by the board of trustees or court of the appropriate jurisdiction under section 88-75, 88-79, 88-85, 88-284, ~~88-285~~, 88-286(c), 88-M, 88-O, or 88-Q, the member shall be reimbursed reasonable attorney's fees together with any costs payable by the system. If an appeal is had, the attorney's fees or costs shall be subject to the approval of the board of trustees or by the appellate court deciding the appeal."

SECTION 12. Section 88-83, Hawaii Revised Statutes, is amended to read as follows:

"§88-83 Election of mode of retirement allowance. (a) Maximum allowance: Upon retirement, any member may elect to receive the maximum retirement allowance to which the member is entitled computed in accordance with section 88-74, 88-76, or 88-80 and in the event of the member's death, there shall be paid to the member's beneficiary, otherwise to the member's estate, the difference between the balance of the member's accumulated contributions at the time of the member's retirement and the retirement allowance paid or payable to the member prior to death.

In lieu of this maximum allowance, the member may elect to receive the member's retirement allowance under any one of the optional plans described below, which shall be actuarially equivalent to the maximum allowance.

Option 1: The member may elect to receive a lesser retirement allowance during the member's lifetime. At the member's retirement, there shall be established an amount of initial insurance that shall be computed on the basis of actuarial factors adopted by the board of trustees. Upon the death of the retirant, any balance remaining in the initial insurance reserve, after deducting the retirement allowance paid to the retirant prior to death, shall be paid to the retirant's beneficiary, otherwise to the retirant's estate. In lieu of the lump sum balance, the beneficiary may elect to receive an allowance for life based on the value of the balance; provided that the allowance is not less than \$100 per month.

Option 2: The member may elect to receive a lesser retirement allowance during the member's lifetime and have those allowances, including cumulative post retirement[-] allowances, if applicable, continued after the member's death to the member's beneficiary during the lifetime of the person. In the event of death of the beneficiary prior to that of the retirant, all further payments shall cease upon the death of the retirant[-]; provided that for members retiring after November 30, 2004, in the event that the retirant's beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the member is entitled.

Option 3: The member may elect to receive a lesser retirement allowance during the member's lifetime and have one-half of such allowance, including fifty per cent of all cumulative post retirement allowances, if applicable, continued after the member's death to the member's beneficiary during the lifetime of that person.

In the event of death of the beneficiary prior to that of the retiree, all further payments shall cease upon the death of the retiree[:]; provided that for members retiring after November 30, 2004, in the event that the retiree's beneficiary dies at any time after the retiree retired, but before the death of the retiree, the retiree, upon the death of the retiree's beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retiree had selected the maximum retirement allowance to which the member is entitled.

Option 4: The member may elect to receive a lesser retirement allowance during the member's lifetime and provide some other benefit to the member's beneficiary in accordance with the member's own specification; provided that this election shall be certified by the actuary to be the actuarial equivalent of the member's retirement allowance and shall be approved by the board.

Option 5: The member may elect to receive the balance of the member's accumulated contributions at the time of retirement in a lump sum and, during the member's lifetime, a retirement allowance equal to the maximum retirement allowance reduced by the actuarial equivalent of these contributions. Upon the death of the retiree, all further payments shall cease. Only a member retiring from service having at least ten years of credited service or for disability may elect this mode of retirement.

To receive benefits, the beneficiary must have been designated by the member in the form and manner prescribed by the board.

~~[In the event of the death of the retiree within one year after the date of retirement, the retiree's beneficiary may elect to receive either the death benefits under the mode of retirement selected, or in lieu thereof, such benefits as would have been paid had the retiree died immediately prior to retirement, less any payments that the retiree received.]~~

Any election of a mode of retirement allowance shall be irrevocable and subject to the spousal or reciprocal beneficiary notification requirement under subsection (c).

~~(b) [Section 88-84 to the contrary notwithstanding, in]~~ In the event of the death of a member after the date of the filing of the member's written application to retire, but prior to the retirement date designated by the member, the designated beneficiary[, otherwise the personal representative of the member's estate, shall], if the member was eligible to retire on the date of the members' death, may elect to receive either death benefits under section 88-84 or the allowance under the option selected by the member that would have been payable had the member retired[, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement]. The effective date of the member's retirement shall be a first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member's retirement application was filed or the day following the member's date of death. The election may not be made if, at the time of the member's death, there are individuals who are eligible to receive death benefits under section 88-85 who have made a claim for the benefits; provided that, if the designated beneficiary is an individual eligible to receive benefits under section 88-85, the designated beneficiary may receive benefits pursuant to an election made under this section pending disposition of the claim for benefits under section 88-85.

(c) No election under this section shall take effect unless:

- (1) The spouse or reciprocal beneficiary of the member is furnished written notification that:
 - (A) Specifies the retirement date, the benefit option selected, and the beneficiary designated by the member;
 - (B) Provides information indicating the effect of the election; and

- (C) Is determined adequate by rules established by the board pursuant to chapter 91; or
- (2) The member selects option 2 or option 3 ~~[option A or option B]~~ and designates the spouse or reciprocal beneficiary as the beneficiary; or
- (3) It is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:
 - (A) There is no spouse or reciprocal beneficiary;
 - (B) The spouse or reciprocal beneficiary cannot be located;
 - (C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary; or
 - (D) Of other reasons, as established by rules of the board pursuant to chapter 91. Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided, shall be effective only with respect to that spouse or reciprocal beneficiary. The system will rely upon the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary.
- (d) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:
 - (1) The terms and conditions of the various benefit options;
 - (2) The rights of ~~[the]~~ member's spouse or reciprocal beneficiary under subsection (c) to be notified of the member's election of a benefit option; and
 - (3) The member's right to make, and the effect of, a revocation of an election of a benefit option.
- (e) The system shall not be liable for any false statements made by the member.
- (f) In the event of the death of the retirant within one year after the date of retirement, the retirant's beneficiary may elect to receive either the death benefit under the retirement allowance option selected by the retirant, or such benefits as would have been paid under section 88-84 had the retirant died immediately prior to retirement, less any payments which the retirant received.
- (g) The increase in the retirant's benefit under options 2, 3, and, if applicable, 4 upon the death of the retirant's designated beneficiary shall be effective the first day of the month following the date of death of the designated beneficiary. The retirant shall notify the system in writing and provide a certified copy of the beneficiary's death certificate. The system shall make retroactive benefit payments to the retirant, not to exceed six months from the date the written notification and the certified copy of the death certificate are received by the system. The retroactive payments shall be without interest."

SECTION 13. Section 88-85, Hawaii Revised Statutes, is amended to read as follows:

"§88-85 Accidental death benefit. (a) Upon the receipt of proper proofs of a member's death by the board of trustees, there shall be paid to the member's designated beneficiary or to the member's estate the amount of the member's accumulated contributions and if, upon the receipt of evidence or proofs that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that

the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member, there shall be paid in lieu of the ordinary death ~~[benefits provided by the contributions of the State or county,]~~ benefit payable under section 88-84, effective on the first day of a month following the member's death, except for the month of December when benefits shall be effective on the first or last day of the month, a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship;
- (2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under such age, divided in such manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains such age; or
- (3) If there is no surviving spouse or reciprocal beneficiary or child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no such nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

(b) Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in death to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition.

(c) Benefits payable under subsection (a) shall continue through the end of the month in which the payee ceases to be eligible for the benefit."

SECTION 14. Section 88-85.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) An application for service-connected accidental death benefits may be filed with the ~~[board]~~ system by or on behalf of the claimant as specified in sections 88-85, ~~[and] 88-286[-], and 88-Q.~~ The application shall be filed no later than two years from the date of receipt of the written notification from the system."

2. By amending subsection (d) to read:

"(d) Upon approval, benefits shall be paid effective the date the claim was filed with the system, in accordance with sections 88-85, ~~[and] 88-286[-], and 88-Q.~~"

SECTION 15. Section 88-96, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any member who ceases to be an employee and who has fewer than five years of credited service shall, upon application to the board of trustees, be paid all of the member’s accumulated contributions and the member’s membership shall thereupon terminate~~[-, provided that interest shall not be credited to an individual’s account nor shall the membership continue after the fourth full year following the calendar year in which the member’s employment terminates, after which time the system, as soon thereafter as possible, shall return the member’s contributions];~~ provided that any such member shall not be paid the member’s accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board of trustees, the member has become an employee again.

The former employee’s membership shall not continue after the fourth full year following the calendar year in which the individual’s employment terminates. The system, as soon as possible after termination of a former employee’s membership, shall return to the former employee the former employee’s accumulated contributions. Regular interest shall be credited to the former employee’s account until the former employee’s accumulated contributions are returned to the former employee.”

SECTION 16. Section 88-132.5, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) Active military service in the military reserve or national guard is not considered active military service unless in time of war or declared national or state emergency. Membership service creditable under this section shall be credited in accordance with sections 88-59 ~~[and]~~, 88-272~~[-]~~, and 88-F.

(g) A ~~[contributory]~~ member’s active military service shall be considered service in the member’s occupation at the time that service is credited ~~[and]~~. A class A or class B member’s active military service shall be purchased at the rate specified in section 88-45~~[-]~~ and the retirement allowance provided by that service shall be calculated as provided in section 88-74. A class C member’s active military service shall be credited at no cost upon certification by the system and the retirement allowance provided by that service shall be calculated as provided in section 88-282. A class H member’s active military service shall be purchased at the rate specified in section 88-G, and the retirement allowance provided by that service shall be calculated as provided in section 88-J.”

SECTION 17. Section 88-134, Hawaii Revised Statutes, is amended to read as follows:

“§88-134 Service retirement benefit. If a service member has terminated the service member’s service with the armed forces and otherwise complies with the requirements of ~~[section]~~ sections 88-73, 88-281, or 88-I, as applicable, the service member shall be entitled to a service retirement benefit to be computed as provided in ~~[section]~~ sections 88-74, 88-282, or 88-J, as applicable, including and taking into consideration the service credit preserved and allowed to the service member by the Servicemen’s Act.”

SECTION 18. Section 88-135, Hawaii Revised Statutes, is amended to read as follows:

“§88-135 Ordinary disability retirement benefit. If a service member terminates the service member’s service in the armed forces and complies with and fulfills the requirements of [section] sections 88-75, 88-284, or 88-L, as applicable, including and taking into consideration the service credit preserved and allowed to the service member under the Servicemen’s Act, the service member shall be entitled to the ordinary disability retirement benefit prescribed in the applicable section [88-75], computed as provided in [section] sections 88-76, 88-284, or 88-M, including and taking into consideration the service credit preserved and allowed to the service member under the Servicemen’s Act.”

SECTION 19. Section 88-136, Hawaii Revised Statutes, is amended to read as follows:

“§88-136 Accidental disability benefit. Any member who has been incapacitated for duty by accident, act of war, or otherwise, occurring while the member is not in the service of the State or any county, shall not by reason of such incapacity be entitled to the accidental disability benefit provided for by [section] sections 88-79, 88-285, or 88-N, but in such event if the member can qualify for an ordinary disability retirement benefit as hereinabove provided, the member shall receive the ordinary disability retirement benefit.”

SECTION 20. Section 88-137, Hawaii Revised Statutes, is amended to read as follows:

“§88-137 Ordinary death benefit. If any service member dies, the ordinary death benefit provided in [section] sections 88-84, 88-286(b), and 88-P shall be paid to the service member’s estate or the service member’s designated beneficiary.”

SECTION 21. Section 88-138, Hawaii Revised Statutes, is amended to read as follows:

“§88-138 Accidental death benefit. The estate or designated beneficiary of a service member who dies by accident, act of war, or other cause, occurring while the service member is not in the service of the State or any county, shall not be entitled to the accidental death benefit provided by [section] sections 88-85[,], 88-286(c), and 88-Q; however, the estate or the beneficiary shall be entitled to the ordinary death benefit as provided in section 88-137.”

SECTION 22. Section 88-139, Hawaii Revised Statutes, is amended to read as follows:

“§88-139 Return of contributions. Any service member may resign from the system at any time, if the service member so chooses, and upon such resignation the service member shall be entitled to the return of the service member’s accumulated contributions as provided in [section] sections 88-96[,], and 88-S, including any amount to the service member’s credit in the annuity savings fund which shall have been contributed by the State or any county under the Servicemen’s Act, but the service member shall cease to be entitled to any of the benefits of the Servicemen’s Act or of sections 88-131 to 88-142, except the return of accumulated contributions, upon the effective date of the service member’s resignation.”

SECTION 23. Section 88-251, Hawaii Revised Statutes, is amended to read as follows:

“§88-251 Applicability. The following provisions of part II of this chapter shall apply to this part:

- (1) Subpart A, except the definitions provided in section 88-21, unless expressly adopted in section 88-261;
- (2) Subpart B, except sections 88-45, 88-46, ~~[88-48, and]~~ 88-52 ~~[to]~~, 88-59, 88-59.5, 88-59.6, 88-61, 88-62~~[;]~~, and 88-Z;
- (3) Subpart C, except sections 88-71 to 88-76, ~~88-79~~, 88-80, ~~[88-81,]~~ 88-83, ~~88-84~~ to 88-85, 88-87 to 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E~~[-except sections 88-134 to 88-139].~~”

SECTION 24. Section 88-271, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any class A or class H member who elects and is approved to withdraw the member’s contributions may become a class C member in accordance with section 88-46.5. Upon approval of the election:

- (1) All rights as a class A or class H member shall be extinguished;
- (2) The member’s accumulated contributions shall be refunded; and
- (3) The member shall not be required to make further contributions to the system.

This election shall be irrevocable.”

SECTION 25. Section 88-273, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any class C member who terminates service prior to accumulating ten years of credited service, excluding unused sick leave, shall cease to be a member and shall forfeit all credited service; provided that:

- (1) If the former class C member becomes a member again within one calendar year from the date of termination, all service credit for previous service shall be restored. If the former class C member becomes a member again more than one calendar year after the date of termination, one month of service credit for previous service shall be restored for each month of service rendered following the return to membership.
- (2) If the former class C member becomes a class A ~~[or]~~, class B, or class H member within one calendar year from the date of termination, all class C service credit for previous service shall be restored. If the former class C member becomes a class A ~~[or]~~, class B, or class H member more than one calendar year after the date of termination, one month of class C service credit for previous service shall be restored for each month of service rendered following the return to membership.

Subject to the provisions of sections 88-D and 88-F, the service credit restored pursuant to this subsection shall be class C service credit.

(b) Any class C member who terminates service with a vested right and who subsequently becomes a class A, class B, ~~[or]~~ class C, or class H member shall retain all service credit for previous service and shall be credited with additional service credit for service rendered following the return to membership.”

SECTION 26. Section 88-281, Hawaii Revised Statutes, is amended to read as follows:

“§88-281 Service retirement. (a) A member who has ten years of credited service and has attained age sixty-two, or a member with thirty years credited service

who has attained the age of fifty-five, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) If a member has at least twenty-five years of credited service as a sewer worker or as a water safety officer of which the last five or more years prior to retirement is credited in such a capacity, then the sewer worker or water safety officer shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(c) A member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) A member who has ten years of credited service and terminates service prior to attaining age sixty-two shall have a vested right and shall be eligible to receive a retirement allowance when the member has attained age sixty-five.

(e) If a member has at least thirty years of credited service through June 30, 2003; twenty-nine years of credited service on or after July 1, 2004; twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, the emergency medical technician shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(f) A member may retire upon the written application to the board, specifying the desired date of retirement, which shall be not less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

~~[(g) In the event of the death of a member after the date of the filing of the member's written application to retire, but prior to the effective date of retirement, the designated beneficiary, otherwise the personal representative of the member's estate shall receive the allowance payable under the option selected by the member; provided that the member meets the eligibility requirements to retire on the member's date of death. The designated beneficiary shall be eligible for a retirement benefit no earlier than thirty days from the date the application was filed or the day following the member's date of death, whichever is later. Retirement benefits shall be effective on the first day of a month, except for the month of December when benefits shall be effective on the first or last day of the month.]~~

SECTION 27. Section 88-283, Hawaii Revised Statutes, is amended to read as follows:

“§88-283 Retirement allowance options. (a) In lieu of the maximum retirement allowance described in sections 88-282, 88-284, and 88-285, a member may elect to receive the member's retirement allowance under one of the options described below, which shall be actuarially equivalent to the maximum retirement allowance:

- (1) Option A: A reduced allowance payable to the member, then upon the member's death, one-half of the allowance, including fifty per cent of all cumulative post retirement allowances, to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary; provided that for members retiring after November 30, 2004, in the event that the retirant's beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's beneficiary, shall receive a retirement allow-

ance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the retirant is entitled;

- (2) Option B: A reduced allowance payable to the member, then upon the member's death, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary; provided that for members retiring after November 30, 2004, in the event that the retirant's beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the retirant is entitled; or
 - (3) Option C: A reduced allowance payable to the member, and if the member dies within ten years of retirement, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary for the balance of the ten-year period.
- (b) Any election of a mode of retirement shall be irrevocable and subject to the spousal or reciprocal beneficiary notification requirement under subsection (c).
- (c) No election under this section shall take effect unless:
- (1) The spouse or reciprocal beneficiary of the member is furnished written notification that:
 - (A) Specifies the retirement date, the benefit option selected, and the beneficiary designated by the member;
 - (B) Provides information indicating the effect of the election; and
 - (C) Is determined adequate by rules established by the board pursuant to chapter 91; or
 - (2) The member selects ~~[option 2 or option 3/]~~ option A or option B and designates the spouse or reciprocal beneficiary as the beneficiary; or
 - (3) It is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:
 - (A) There is no spouse or reciprocal beneficiary;
 - (B) The spouse or reciprocal beneficiary cannot be located;
 - (C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary; or
 - (D) Of other reasons, as established by rules of the board pursuant to chapter 91. Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided, shall be effective only with respect to that spouse or reciprocal beneficiary. The system shall rely upon the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary.
- (d) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:
- (1) The terms and conditions of the various benefit options;
 - (2) The rights of ~~[F]the[]~~ member's spouse or reciprocal beneficiary under subsection (c) to be notified of the member's election of a benefit option; and

- (3) The member's right to make, and the effect of, a revocation of an election of a benefit option.
- (e) The system shall not be liable for any false statements made by the member.
- (f) In the event of the death of a member after the date of the filing of the member's written application to retire, but prior to the retirement date designated by the member, the designated beneficiary, if the member was eligible to retire on the date of the member's death, may elect to receive either:
 - (1) An allowance that would have been payable if the member had retired and had elected to receive a retirement allowance under option B; or
 - (2) The allowance under the option selected by the member which would have been payable had the member retired.

The effective date of the member's retirement shall be a first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member's retirement application was filed or the day following the member's date of death. The election may not be made if, at the time of the member's death, there are individuals who are eligible to receive death benefits under section 88-286(c) who have made a claim for the benefits; provided that, if the designated beneficiary is an individual eligible to receive benefits under section 88-286(c), the designated beneficiary may receive benefits pursuant to an election under this section pending disposition of the claim for benefits under section 88-286(c). No death benefits will be payable under section 88-286(c) while benefits are paid pursuant to an election made under this section.

(g) In the event of the death of the retirant within one year after the date of retirement, the retirant's beneficiary may elect to receive either:

- (1) The death benefit under the retirement option selected by the retirant;
or
- (2) The death benefit under option B; provided that the difference between the benefit that the retirant received and the benefit that would have been payable to the retirant had the retirant elected to receive a retirement allowance under option B shall be returned to the system.

(h) The increase in the retirant's benefit under options A and B upon the death of the retirant's designated beneficiary shall be effective the first day of the month following the date of death of the designated beneficiary. The retirant shall notify the system in writing and provide a certified copy of the beneficiary's death certificate. The system shall make retroactive benefit payments to the retirant, not to exceed six months from the date the written notification and the certified copy of the death certificate are received by the system. The retroactive payments shall be without interest."

SECTION 28. Section 88-285, Hawaii Revised Statutes, is amended to read as follows:

"§88-285 Service connected disability retirement. A member who would be eligible to receive a service connected disability retirement allowance pursuant to section 88-79 shall receive a ~~[maximum]~~ retirement allowance of ~~[one and one-fourth]~~ thirty-five per cent of the member's average final compensation ~~[multiplied by the number of years of credited service unreduced for age, but not less than fifteen per cent of average final compensation]."~~

SECTION 29. Section 88-286, Hawaii Revised Statutes, is amended to read as follows:

“§88-286 Death benefit. (a) The surviving spouse or reciprocal beneficiary and dependent child or children of a member at the time of the member’s death shall be eligible for a death benefit if the member suffers either an ordinary death while in service or on authorized leave without pay after accumulating ten years of credited service or an accidental death.

(b) In the case of ordinary death, the death benefit shall be as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to one-half of the member’s accrued maximum retirement allowance unreduced for age, payable until remarriage, marriage, or entry into a new reciprocal beneficiary relationship, as if the member had retired on the first day of a month following the member’s death, except for the month of December when retirement on the first or last day of the month shall be allowed; and for each dependent child an allowance equal to ten per cent of the member’s accrued maximum retirement allowance unreduced for age, payable until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member’s accrued retirement allowance unreduced for age; or
- (2) For the surviving spouse or reciprocal beneficiary, if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, an allowance that would have been payable as if the member had retired on the first day of a month following the member’s death, except for the month of December when retirement on the first or last day of the month shall be allowed and had elected to receive a retirement allowance under option B of section 88-283; and
- (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child shall receive an allowance equal to twenty per cent of the member’s accrued maximum retirement allowance unreduced for age, payable on the first day of a month following the member’s death, except for the month of December when retirement on the first or last day of the month shall be allowed, until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member’s accrued maximum retirement allowance unreduced for age.

For the purpose of determining eligibility for the ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

(c) In the case of accidental death, the death benefit shall be effective on the first day of a month following the member’s death, except for the month of December when retirement on the first or last day of the month shall be allowed, as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to thirty per cent of the member’s average final compensation, payable until remarriage, marriage, or upon entry into a new reciprocal beneficiary relationship;
- (2) If there is a surviving spouse or reciprocal beneficiary, each dependent child under eighteen shall receive an allowance equal to the greater of:
 - (A) Ten per cent of the member’s accrued maximum retirement allowance unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per

cent of the member's accrued maximum retirement allowance unreduced for age; or

- (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed six per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child under age eighteen shall receive an allowance equal to the greater of:

- (A) Twenty per cent of the member's accrued maximum retirement allowance unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued maximum retirement allowance unreduced for age; or

- (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed twelve per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen.

(d) Benefits payable under this section shall continue through the end of the month in which the payee ceases to be eligible for the benefit."

SECTION 30. There is appropriated out of the employees' retirement system's investment earnings the sum of \$1,580,000, or so much thereof as may be necessary for fiscal year 2004-2005 to carry out the purposes of this Act.

The sum appropriated shall be expended by the employees' retirement system for the purposes of this Act.

SECTION 31. In codifying this Act, the revisor of statutes shall substitute appropriate section numbers for section references used in this Act.

SECTION 32. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 33. This Act shall take effect on July 1, 2004.

(Approved July 7, 2004.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 180

S.B. NO. 2073

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-8, Hawaii Revised Statutes, is amended as follows:

- 1. By amending subsections (a) and (b) to read:

"(a) Notwithstanding any other law to the contrary, the board of regents may establish without regard to the public notice or public hearing requirements of

chapter 91, a retirement system separate from the state employees' retirement system to provide retirement allowances and other benefits for University of Hawaii employees who are[:

- (1) ~~Members of bargaining unit (7); or~~
- (2) ~~Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89.]~~

appointed on or after the effective date of this Act by the University of Hawaii board of regents and are eligible for membership in the state employees' retirement system.

(b) The general administration and the responsibility for the proper operation of the optional retirement system of the University of Hawaii shall be vested in the board of regents. ~~[The board of regents may manage the optional retirement system within the University of Hawaii or contract for the management of the optional retirement system.]~~ In fulfillment of its general administrative responsibilities related to the optional retirement system of the University of Hawaii and to ensure adequate choice and competition for employee-participants, the board of regents shall designate no fewer than three companies to provide annuity contracts, mutual fund accounts, or similar investment products offered through state or national banking institutions, or a combination of them, under the optional retirement system."

2. By amending subsections (e), (f), (g), and (h) to read:

~~"(e) [The employer's share of the cost of the optional retirement plan of the optional retirement system of the University of Hawaii shall not exceed the equivalent amount for any other group covered by this chapter.] For any employee whose compensation is paid in whole or in part from the general fund and who elects to become a member of the optional retirement system, the University of Hawaii shall make an annual contribution on behalf of the employee to the optional retirement system. The State shall remit to the University of Hawaii an amount equal to six per cent of the employee's compensation, taking into account any lag or smoothing arrangements that are in effect with respect to appropriations that the state employees' retirement system receives from the general fund, in lieu of any contribution that the State would have made to the state employees' retirement system on behalf of the employee had the employee not elected membership in the optional retirement system; provided that:~~

- ~~(1) The State's annual contribution for any such employee shall not exceed six per cent of \$100,000; and~~
- ~~(2) The University of Hawaii shall be responsible for any contribution amounts in excess of the State's contribution.~~

~~(f) Any member of the state employees' retirement system when the optional retirement system of the University of Hawaii is established [who is also:~~

- ~~(1) A member of bargaining unit (7); or~~
- ~~(2) Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89,~~

~~shall remain a member of the state employees' retirement system unless the person elects in writing on a form prescribed by the board of regents to terminate the person's membership. The form shall be submitted to the state employees' retirement system no later than ninety days after the establishment of the optional retirement system of the University of Hawaii.] shall not be eligible for membership in the optional retirement system.~~

(g) Any person hired after the establishment of the optional retirement system of the University of Hawaii who is[:

- (1) A member of bargaining unit (7); or

- (2) ~~Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89,~~

an appointee of the University of Hawaii board of regents and is eligible for membership in the state employees' retirement system shall [elect to] be enrolled as a member of the state employees' retirement system [or], unless the employee elects to be enrolled in the optional retirement system of the University of Hawaii[.] within ninety days of the date of the employee's appointment. Upon [an election the] electing to be enrolled in the optional retirement system, a person who remains employed by the University of Hawaii may not transfer from [one system to the other.] the optional retirement system to the state employees' retirement system. Service under the optional retirement system shall not be creditable as service under the state employees' retirement system.

(h) Notwithstanding any other law to the contrary, retirement benefits for the optional retirement system of the University of Hawaii shall be a subject of collective bargaining negotiations for bargaining ~~[unit] units (7)[.] and (8).~~

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval and shall be repealed on July 1, 2009; provided that subsections (a), (b), (e), (f), (g), and (h) of section 88-8, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved July 7, 2004.)

ACT 181

S.B. NO. 2873

A Bill for an Act Relating to the Employees' Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 88-105, Hawaii Revised Statutes, is amended to read as follows:

“§88-105 Actuarial investigations, valuations. (a) At least once in each five-year period, commencing with fiscal year ~~[1995,] 1994-1995,~~ the actuary shall make an actuarial investigation of the experience of the system and shall recommend to the board of trustees the adoption for actuarial valuation of the system of such mortality, service, and other tables as shall be deemed appropriate and necessary, and the actuary shall recommend to the legislature for its adoption the investment yield rate and annual salary increase assumption. ~~[The actuary shall assess the actual investment earnings during the five-year review period and recommend appropriate adjustments to the contributions under section 88-123 for the same period.]~~ The actuary shall further recommend the acceptable ~~[level of pension benefit obligation] funded ratio~~ for the system, taking into consideration the guaranties of ~~[Article] article XVI, section 2[.] of the [State Constitution,] state constitution,~~ section 88-107, and section 88-127.

(b) Commencing with fiscal year 2009-2010, the actuary shall recommend, based on the actuarial investigation, the appropriate adjustments to the contribution rates under section 88-122(e).

(c) On the basis of such tables and other factors as the board or legislature, as the case may be, shall adopt, and commencing with fiscal year 2005-2006 and the contribution rates of section 88-122(e), the actuary shall make an annual valuation of the assets and liabilities of the funds of the system."

SECTION 2. Section 88-122, Hawaii Revised Statutes, is amended to read as follows:

"§88-122 Determination of employer normal cost and accrued liability contributions. (a) Based on regular interest and such mortality and other tables as are adopted by the board of trustees, the actuary engaged by the board, on the basis of successive annual actuarial valuations, shall determine the employer's normal cost and accrued liability contributions for each fiscal year beginning July 1 separately for the following two groups of employees:

- (1) Police officers, firefighters, and corrections officers; and
- (2) All other employees.

(b) The actuarial valuations made for years after June 30, 1999, shall be based on an eight per cent investment yield rate, assumed salary increases of four per cent, and tables, contribution rates, and factors adopted by the board or legislature for actuarial valuations of the system, subject to recommendations made by the actuary appointed under section 88-29.

(c) With respect to each of the two groups of employees in subsection (a), the normal cost for each year after June 30, 1994, shall be the percentage of the aggregate annual compensation of employees as of March 31 of the valuation year as determined by the actuary using the entry age normal cost funding method. On each June 30 the board shall determine the allocation of the assets of the pension accumulation fund between the two groups of employees in subsection (a); provided that the assets of the pension accumulation fund as of June 30, 1976, shall be allocated between the two groups in the same proportion as the aggregate annual compensation of each group as of March 31, 1976.

(d) Commencing with ~~[the 1995]~~ fiscal year 1994-1995 and each subsequent fiscal year, the actuary shall determine the total unfunded accrued liability using the entry age normal cost funding method separately for each of the two groups of employees in subsection (a). The accrued liability contribution for each of the two groups of employees shall be the annual payment required to liquidate the unfunded accrued liability over a period of twenty-nine years beginning July 1, 2000. Any increase or decrease in the total unfunded accrued liability resulting from legislative changes in the benefit provisions of the employees' retirement system shall be liquidated over a period of time to be determined by the actuary.

(e) Commencing with fiscal year 2005-2006 and each subsequent fiscal year, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on fifteen and three-fourths per cent of the member's compensation for police officers, firefighters, and corrections officers and thirteen and three-fourths per cent of the member's compensation for all other employees. The contribution rates shall amortize the total unfunded accrued liability of the entire plan over a period not to exceed thirty years. The contribution rates shall be subject to adjustment:

- (1) If the actual period required to amortize the unfunded accrued liability exceeds thirty years;
- (2) If the actual period required to amortize the unfunded accrued liability falls below the established benchmark funding period of twenty-five years; or
- (3) Based on the actuarial investigation conducted in accordance with section 88-105.'

SECTION 3. Section 88-123, Hawaii Revised Statutes, is amended to read as follows:

“§88-123 Amount of annual contributions by the State and counties. The contribution payable in each year to the pension accumulation fund by the State and by each county~~[, respectively,]~~ shall be determined by allocating the sum of the normal cost and the accrued liability contribution for:

- (1) ~~[police]~~ Police officers, firefighters, and corrections officers, the latter after the actual transfer of all county jails pursuant to executive order of the governor~~[,];~~ and
- (2) ~~[all]~~ All other employees

in the same proportion as the aggregate annual compensation of each group employed by the State and by each county, respectively, as of March 31 of the valuation year. Commencing with fiscal year 2005-2006, the contribution payable in each year to the pension accumulation fund by the State and each county, respectively, shall be determined by multiplying the contribution rates in section 88-122(e) by the actual covered payroll in a given fiscal year for each of the two groups of employees in section 88-122(a).”

SECTION 4. Section 88-124, Hawaii Revised Statutes, is amended to read as follows:

“§88-124 State appropriations for system. Before October 2 in every year, the board of trustees shall certify to the governor the appropriation necessary to pay to the various funds of the system the amounts payable by the State under this part for the fiscal year, beginning July 1 of the year next following, and items of appropriation providing such amounts shall be included in the general appropriation bill when it is presented to the legislature for final passage.

Commencing with the 2006 calendar year and every subsequent calendar year, the board of trustees by October 2 in every calendar year, shall certify to the governor the actual amount owed by the State under this part for the just completed fiscal year ending June 30. The actual amount owed for the just completed fiscal year shall be compared against actual amounts paid in the fiscal year, and any excess contributions by the State shall be used to offset any amounts owed by the State in the next fiscal year beginning July 1. Any additional contributions owed by the State for the just completed fiscal year ending June 30 shall be payable beginning July 1 of the fiscal year next following and shall be included in the general appropriation bill when it is presented to the legislature for final passage.”

SECTION 5. Section 88-125, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The amount payable by each department or agency of the State, or the office of Hawaiian affairs, covered by this section shall be determined at least quarterly by the department of budget and finance on the basis of the payroll of the employees of the department or agency, or trustees of the office of Hawaiian affairs, who are members of the system in the same manner the allocation of employer contributions is determined in section 88-123. The comptroller of the State, the office of Hawaiian affairs, or any department or agency having control of its own funds shall, upon information furnished by the department of budget and finance, issue a ~~[warrant]~~ check for the proper amount to the ~~[system,]~~ director of finance, charging the same to the appropriate fund. The ~~[system]~~ director of finance shall place all such sums to the credit of the State as part payment of the State’s contributions to the various funds of the system.”

SECTION 6. Section 88-126, Hawaii Revised Statutes, is amended to read as follows:

“§88-126 Certification and payment of county contributions to system.

(a) The board of trustees shall certify annually to the councils of each county and to the director of finance of the State the amount due from each county on account of its employees who are members of the system. The council of each county shall include in its annual budget the amount certified to it by the board. The amount shall be paid by the county before October 1 and April 1 of each fiscal year.

(b) Commencing with fiscal year 2005-2006, each of the counties shall make contributions in accordance with section 88-123. In calendar year 2006 and every subsequent calendar year, the board of trustees by October 2, shall certify to the councils of each county and to the director of finance of the State the actual amount owed by each county under this part for the just completed fiscal year ending June 30. The actual amount owed for the just completed fiscal year shall be compared against actual amounts paid in the fiscal year, and any excess contributions by each of the counties shall be used to offset any amounts owed in the next fiscal year beginning July 1. Any additional contributions owed by each of the counties for the just completed fiscal year ending June 30 shall be payable by October 1 and April 1 of the fiscal year next following. The council of each county shall include in its annual budget the amount certified to it by the board.

(c) If the amount or any portion [thereof] of the amounts owed is not paid by the county before October 1 and April 1 of each fiscal year, the director of finance shall retain out of the [real property] transient accommodations tax money collected for the year a sum equal to the amount or portion thereof not so paid. All the moneys retained and collected by the director of finance shall be deposited in the appropriate fund or funds of the system. The amount of any deficiency in meeting the obligations shall be added to the amount due from the county for the succeeding year.”

SECTION 7. Section 88-127, Hawaii Revised Statutes, is amended to read as follows:

“§88-127 Guaranty. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves and pension reserves as provided for the payment of all pensions, annuities, retirement allowances, refunds, and other benefits granted under this part, and all expenses in connection with the administration and operation of the system are made obligations of the State and of the respective counties. All income, interest, and dividends derived from deposits and investments authorized by this part shall be used for the payment of such obligations. After June 30, 1964, the income shall include capital gains or losses, whether realized or unrealized, in the value of the retirement system assets as taken from time to time thereafter by the board of trustees. ~~[Any amount derived therefrom, which, when combined with appropriation requirements as certified by the board under the provisions of this part, would exceed the amount required to provide for such obligations, may be used to reduce the appropriations otherwise required.]~~ It is hereby declared that any and all sums contributed or paid from whatever source to the system for the funds created by this part, and all funds of the system including any and all interest and earnings of the same, are and shall be held in trust by the board for the exclusive use and benefit of the system and for the members of the system and shall not be subject to appropriation for any other purpose whatsoever.”

SECTION 8. Act 212, Session Laws of Hawaii 1994, as amended by Act 216, Session Laws of Hawaii 2000, is amended by amending section 4 to read as follows:

“SECTION 4. The board of trustees of the employees’ retirement system shall make payments with respect to all eligible employees who retire pursuant to this Act.

The board shall determine [the]:

- (1) The amount equal to the actuarial present value of the difference between the allowances members receive after the receipt of service credit under this Act and the allowances members would have received without the two years of additional service credit~~[- The board shall also determine the]; and~~
- (2) The portion of the additional actuarial present value of benefits to be charged to the State and to each county, based on retirements during the early retirement incentive bonus period.

The State and counties shall make separate additional payments to the employees’ retirement system in the amounts required to liquidate the additional actuarial present value of benefits over a period of five years beginning July 1, 1997; provided that the State’s and counties’ separate payments under this Act [will] shall be recalculated so as to liquidate the outstanding balance of each employer’s additional actuarial present value of benefits as of June 30, 1997, over the period of time specified in section 88-122(d)[-], Hawaii Revised Statutes; provided further that the State’s and counties’ payments under this Act remaining as of June 30, 2005, shall be included in employer contributions for normal cost and accrued liability as specified in section 88-122(e), Hawaii Revised Statutes.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2005.

(Approved July 7, 2004.)

ACT 182

S.B. NO. 2879

A Bill for an Act Relating to Federal Tax Qualification of the Employees’ Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding to subpart A of part II a new section to be appropriately designated and to read as follows:

“§88- Federal tax qualification requirements. (a) The system shall be administered in accordance with the requirements of section 401(a)(1), (2), (8), (9), (25), and (31) of the Internal Revenue Code of 1986, as amended. Without limiting the generality of the foregoing and notwithstanding any provision of chapter 88 to the contrary:

- (1) Prior to the satisfaction of all liabilities with respect to members and their beneficiaries, no part of the corpus or income of the system shall be used for or diverted to purposes other than for the exclusive benefit

of members and their beneficiaries. The payment of reasonable expenses from the expense fund for the administration of the system in accordance with section 88-116 shall be deemed to be for the benefit of members and their beneficiaries;

- (2) Benefits forfeited by a member for any reason shall not be applied to increase the benefits a member or beneficiary would otherwise receive under the system;
- (3) In accordance with rules adopted by the board of trustees, the entire interest of a member shall be distributed or distribution shall begin no later than the member's "required beginning date," as defined in section 401(a)(9) of the Internal Revenue Code of 1986, as amended;
- (4) In accordance with rules adopted by the board of trustees, a member or beneficiary may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an "eligible rollover distribution" paid in a "direct rollover" to an "eligible retirement plan", as such terms are defined in section 401(a)(31) of the Internal Revenue Code of 1986, as amended; and
- (5) In the event of the termination of or complete discontinuance of employer contributions to the system, the rights of all members to benefits accrued as of the date of such termination or discontinuance, to the extent then funded, shall be nonforfeitable.

(b) The board of trustees shall adopt rules necessary for the purposes of this section. Rules adopted for the purposes of this section shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91; provided that the rules shall be adopted at a public meeting subject to the requirements of part I of chapter 92 and a copy of the proposed rules shall be available for public inspection at the office of the system at least six calendar days before the meeting."

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section immediately following section 88-21 to be designated as section 88-21.5 and to read as follows:

"§88-21.5 Compensation. Unless a different meaning is plainly required by context, as used in this part, "compensation" means normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed; overtime, differentials, and supplementary payments; bonuses and lump sum salary supplements; and elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended. Bonuses and lump sum salary supplements shall be deemed earned when payable; provided that bonuses or lump sum salary supplements in excess of one-twelfth of compensation for the twelve months prior to the month in which the bonus or lump sum salary supplement is payable, exclusive of overtime, bonuses, and lump sum salary supplements, shall be deemed earned:

- (1) During the period agreed-upon by the employer and employee, but in any event over a period of not less than twelve months; or
- (2) In the absence of an agreement between the employer and the employee, over the twelve months prior to the date on which the bonus or lump sum salary supplement is payable."

SECTION 3. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of "actuarial equivalent" to read as follows:

"Actuarial equivalent": a benefit of equal value to the accumulated contributions, annuity, pension or retirement allowance, when computed upon the

basis of the actuarial tables ~~[in use by the system.]~~ and other assumptions approved by the board of trustees from time to time and specified in writing.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved July 7, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 183

S.B. NO. 2878

A Bill for an Act Relating to the Federal Tax Limit on Compensation Applicable to the Employees’ Retirement System.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The employees’ retirement system of the State of Hawaii (ERS) is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended (Code). Section 401(a)(17) of the Code limits the annual compensation that may be taken into account in determining benefit accruals under the ERS. Section 401(a)(17) was first effective with respect to the ERS on July 1, 1996. Currently, there is no provision in chapter 88, Hawaii Revised Statutes, applying the section 401(a)(17) limits. The legislature finds that chapter 88, Hawaii Revised Statutes, should be amended to apply the federal tax limit on compensation in accordance with federal tax law.

Under article XVI, section 2, of the Constitution of the State of Hawaii, membership in the ERS is a “contractual relationship”; a member’s “accrued benefit” may not be “diminished” or “impaired.” The legislature finds that the Constitution of the State of Hawaii limits what the legislature may do to bring the ERS into retroactive compliance with federal tax law. If the “accrued benefits” cannot be provided under a tax-qualified plan, they must be provided under a nontax-qualified plan.

This Act amends chapter 88, Hawaii Revised Statutes, to apply the federal tax limits on pension compensation effective July 1, 1996, and adds a nontax-qualified arrangement to protect benefits accrued in excess of the federal tax limits for the period July 1, 1996, through June 30, 2004. This Act also appropriates funds to pay the nontax-qualified benefits.

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§88- Federal tax limits on annual compensation. (a) Effective July 1, 1996, compensation used to determine “average final compensation” under section 88-81 and employee contributions picked up by the employer under section 88-46, shall be subject to the annual limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended.

(b) Notwithstanding subsection (a), any member who accrued a benefit prior to July 1, 2004, based on annual compensation in excess of the limit set forth in

section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall receive a nontax-qualified benefit equal to the difference between:

- (1) The pension benefit that would be payable at the earliest age the member could retire with an unreduced benefit, based on the member's years of credited service and the member's average final compensation as of June 30, 2004, without regard to the limit under section 401(a)(17); and
 - (2) The tax-qualified pension benefit that would be payable at the earliest age the member could retire with an unreduced benefit, based on the member's years of credited service as of June 30, 2004, and the member's average final compensation as limited by section 401(a)(17) as of the earliest age the member could retire with an unreduced benefit, or, upon the member's termination of service, if earlier.
- (c) The nontax-qualified benefit under subsection (b) shall be determined and paid in a single lump sum within the time required to meet federal tax withholding and reporting obligations for the first year the benefit is taxable. The lump sum shall be the actuarial equivalent of a single-life annuity payable at the earliest age the member could retire with an unreduced benefit, assuming that the compensation limit in effect under section 401(a)(17) at the time the benefit is taxable will increase two per cent annually. The actuarial equivalent of the single-life annuity shall be calculated on the following assumptions:
- (1) An eight per cent discount rate;
 - (2) The 1994 Group Annuity Mortality Static Table (Males and Females), published in the Transactions of the Society of Actuaries 1995, vol. 47 (table 18), using a blended mortality table that is a fifty per cent-fifty per cent blend of the 1994 Group Annuity Mortality table for males set back two years and the 1994 Group Annuity Mortality table for females set back one year; and
 - (3) A two and one-half per cent simple interest cost of living adjustment to the original annuity.
- (d) At the earliest age the member could retire with an unreduced benefit, or, upon the member's termination of service, if earlier, the member shall be entitled to an additional payment if the actual compensation limit then in effect under section 401(a)(17) is less than the limit that was assumed to be in effect under subsection (c) as of the date that was assumed to be the member's unreduced retirement age. Such additional payment, if any, shall be the difference between:
- (1) The benefit that would have been paid under subsection (c) if the member's unreduced retirement age and the actual section 401(a)(17) limit in effect at the earlier of the member's unreduced retirement age or termination of service had been known and used; and
 - (2) The benefit that was paid under subsection (c).
- The amount of any additional payment shall be adjusted for interest at eight per cent from the date of payment under subsection (c) to the date of payment under this subsection.
- (e) The nontax-qualified benefit shall be administered by the board of trustees; provided that:
- (1) State members shall be paid with funds appropriated from the State's general revenues; provided that the University of Hawaii and the departments and agencies subject to section 88-125 shall reimburse the State for the respective amounts payable on account of the employees of the University of Hawaii or in such departments and agencies; and
 - (2) County members shall be paid by the respective counties pursuant to assessments made and received by the system.
- (f) Section 88-91 shall apply to the nontax-qualified benefit."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$369,350 or so much thereof as may be necessary for fiscal year 2004-2005 to carry out the purposes of this Act, including pension payments and administrative expenses.

The sum appropriated shall be expended by the employees' retirement system of the State of Hawaii for the purposes of this Act.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2004; provided that Section 2 shall take effect retroactive to July 1, 1996.

(Approved July 7, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 184

S.B. NO. 2355

A Bill for an Act Relating to Public Employee Health Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 87A-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This section shall apply to state and county contributions to the fund for employees who were hired after June 30, 1996, but before July 1, 2001, and who retire with fewer than twenty-five years of credited service, excluding sick leave; provided that this section shall not apply to~~[:]~~ the following employees, for whom state and county contributions shall be made as provided by section 87A-33:

- (1) An employee hired prior to July 1, 1996, who transfers employment after June 30, 1996~~[: and], and who cumulatively accrues at least ten years of credited service; and~~
- (2) An employee hired prior to July 1, 1996, who has at least ten years of credited service ~~[and who has had]~~ prior to a break in service.

For the¹ purposes of this section~~[- “transfer”]:~~

“Break in service” means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

“Transfer” means to leave state or county employment and return to state or county employment within ninety calendar days.”

SECTION 2. Section 87A-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This section shall apply to state and county contributions to the fund for employees hired after June 30, 2001, and who retired, except that this section shall not apply to~~[:]~~ the following employees, for whom state and county contributions shall be made as provided by section 87A-35:

- (1) An employee hired after June 30, 1996, and prior to July 1, 2001, who transfers employment after June 30, 2001~~[:], and who cumulatively accrues at least ten years of credited service; and~~
- (2) An employee hired after June 30, 1996, and prior to July 1, 2001, who has at least ten years of credited service ~~[and who has had]~~ prior to a break in service.

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For purposes of this section[, ~~“transfer”~~]:

“Break in service” means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

“Transfer” means to leave state or county employment and return to state or county employment within ninety calendar days.”

SECTION 3. The board of trustees of the employer-union health benefits trust fund shall establish a process by which public employees affected by this Act shall be notified of the retirement health benefits options provided under this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval.

(Approved July 7, 2004.)

Note

1. “The” should be underscored.

ACT 185

S.B. NO. 2926

A Bill for an Act Relating to the Housing Loan and Mortgage Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. There is a substantial need for affordable rental housing throughout the State of Hawaii. Resources to finance the development or rehabilitation of affordable rental housing projects are limited; thus, there is a growing demand for financing under the Hula Mae multi-family rental housing program. Under the program, the housing and community development corporation of Hawaii is authorized to issue up to \$200,000,000 in tax-exempt revenue bonds to provide below-market rate-interim or permanent financing to developers or owners of affordable rental housing projects.

The purpose of this Act is to increase the bond authorization amount by an additional \$100,000,000.

SECTION 2. Act 291, Session Laws of Hawaii 1980, section 11, as amended by Act 304, Session Laws of Hawaii 1996, section 1, is amended to read as follows:

“SECTION 11. Issuance of revenue bond; amount authorized. Revenue bonds may be issued by the housing [~~finanee~~] and community development corporation of Hawaii pursuant to part III, chapter 39 and subpart B of part [H] III of chapter [201E,] 201G, Hawaii Revised Statutes, in an aggregate principal amount not to exceed [~~\$200,000,000~~] \$300,000,000, at such times and in such amounts as the housing [~~finanee~~] and community development corporation of Hawaii deems advisable for the purpose of undertaking and maintaining any of the housing loan programs under subpart B of part [H] III of chapter [201E,] 201G, Hawaii Revised Statutes, relating to the funding or purchasing of eligible project loans.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 8, 2004.)

ACT 186

S.B. NO. 2704

A Bill for an Act Relating to Mandatory Seller Disclosures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 508D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§508D- Release or waiver of construction defect. Any release from or waiver of liability, or release from a warranty by a seller to any government agency, contractor as defined in section 444-1, or engineer, architect, land surveyor, or landscape architect licensed to practice that profession under chapter 464, for any defect, mistake, or omission in the design or construction of any residential real property that measurably affects the value of the residential real property is a material fact that shall be contained in a disclosure statement.”

SECTION 2. Section 508D-1, Hawaii Revised Statutes, is amended by amending the definition of “disclosure statement” to read as follows:

“Disclosure statement” means a written statement prepared by the seller or at the seller’s direction, that purports to fully and accurately disclose all material facts relating to the residential real property being offered for sale that:

- (1) Are within the knowledge or control of the seller;
- (2) Can be observed from visible, accessible areas; or
- (3) Are required to be disclosed under ~~[section]~~ sections 508D-15[:] and 508D-__.

Except for the disclosures required under section 508D-15, no seller shall have any duty to examine any public records when preparing a disclosure statement.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 8, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 187

S.B. NO. 2440

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 171-99, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

ACT 188

“(e) Assignment; certificate of occupation or homestead lease. No existing certificate of occupation or existing homestead lease, or fractional interest thereof, shall be transferable or assignable except by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier’s or lessee’s family.

For the purposes of this section, “family” means the spouse, reciprocal beneficiary, children, parents, siblings, grandparents, grandchildren, nieces, ~~and~~ nephews, a parent’s siblings, children of a parent’s siblings, and grandchildren of a parent’s siblings, of the occupier or lessee.

All the successors shall be subject to the performance of the unperformed conditions of the certificate of occupation or the homestead lease.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 8, 2004.)

ACT 188

S.B. NO. 2869

A Bill for an Act Relating to the Maintenance of Properties Within the Kalaeloa Community Development District.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Barbers Point Naval Air Station was officially closed on July 1, 1999, and the Navy is in the process of conveying approximately two thousand one hundred and fifty acres of this property, which has been named the “Kalaeloa community development district,” to various agencies of the federal government, the State, and the city and county of Honolulu. However, for various reasons, many of these parcels remain vacant and, therefore, are not being sufficiently maintained. As a result, the condition of these properties at Kalaeloa has continued to deteriorate. Complaints include overgrown grass, kiawe fires, rubbish near roadways, and unkempt appearance of property. The Hawaii community development authority, as the agency with jurisdiction over the Kalaeloa community development district, is concerned about the threats these issues pose to public health and safety and seeks to encourage proper maintenance of all properties in Kalaeloa by establishing a set of procedures to address the deteriorating conditions in Kalaeloa.

The purpose of this Act is to clarify the power of the Hawaii community development authority to act as an ombudsman for issues of concern within the Kalaeloa community development district as defined in section 206E-193, Hawaii Revised Statutes. This Act will clarify the Hawaii community development authority’s power to:

- (1) Receive and follow up on complaints with appropriate landowners within Kalaeloa;
- (2) Take a proactive role in researching and monitoring problem areas; and
- (3) Report to the landowners in the district regarding the nature and number of complaints and inquiries to ensure proper notification at the highest levels.

SECTION 2. Chapter 206E, Hawaii Revised Statutes, is amended by adding six new sections to part VII to be appropriately designated and to read as follows:

“§206E- Procedure. The authority may establish procedures for receiving and processing district-related complaints, conducting research, monitoring matters that arise within the district, and reporting its findings.

§206E- Investigation of complaints. (a) The authority may research any complaint relating to the district that it determines to be an appropriate subject for investigation, including:

- (1) Unkempt appearance of property;
- (2) Brushfires on property;
- (3) Rubbish disposed of inappropriately; or
- (4) Conditions on property otherwise incongruous with generally accepted standards of maintenance.

(b) The authority may investigate, conduct research, or monitor any matter that arises within the district, in accordance with this part.

§206E- Notice to complainant and landowner; actions taken. (a) If the authority decides not to research a complaint filed with the authority, it shall inform the complainant of its decision and shall state its reasons.

If the authority decides to research the complaint, it shall notify the complainant of its decision and shall also notify the landowner of its intention to investigate.

(b) After a reasonable time has elapsed, the authority shall notify the complainant of the actions taken by it and by the landowner.

§206E- Consultation with landowner. Before giving any opinion or recommendation that is critical of a landowner or person who is the subject of the complaint, the authority shall consult with the landowner or person on the best means to remedy the situation.

§206E- Publication of recommendations. After a reasonable time has elapsed, the authority may present its opinion and recommendations to the governor, the legislature, the public, or any of these. The authority shall include with this opinion any reply made by the landowner.

§206E- Quarterly report. The authority shall submit to the various landowners in the district a quarterly report discussing the authority’s activities under this part. The report shall be made available to the public upon request.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved July 8, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Pain Patient's Bill of Rights.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PAIN PATIENT’S BILL OF RIGHTS**

- § **-1 Pain patient’s bill of rights; findings.** The legislature finds that:
- (1) Inadequate treatment of severe acute pain and severe chronic pain originating from cancer or noncancerous conditions is a significant health problem;
 - (2) For some patients, pain management is the single most important treatment a physician can provide;
 - (3) A patient who suffers from severe acute pain or severe chronic pain should have access to proper treatment of pain;
 - (4) Due to the complexity of their problems, many patients who suffer from severe acute pain or severe chronic pain may require referral to a physician with expertise in the treatment of severe acute pain and severe chronic pain. In some cases, severe acute pain and severe chronic pain is best treated by a team of clinicians to address the associated physical, psychological, social, and vocational issues;
 - (5) In the hands of knowledgeable, ethical, and experienced pain management practitioners, opiates administered for severe acute pain or severe chronic pain can be safe; and
 - (6) Opiates may be part of an overall treatment plan for a patient in severe acute pain or severe chronic pain who has not obtained relief from any other means of treatment.

- § **-2 Bill of rights.** The pain patient’s bill of rights includes the following:
- (1) A patient who suffers from severe acute pain or severe chronic pain has the option to request or reject the use of any or all modalities to relieve the pain;
 - (2) A patient who suffers from severe acute pain or severe chronic pain has the option to choose from appropriate pharmacologic treatment options to relieve severe acute pain or severe chronic pain, including opiate medications, without first having to submit to an invasive medical procedure.

For purposes of this paragraph, “invasive medical procedure” means surgery, destruction of a nerve or other body tissue by manipulation, or the implantation of a drug delivery system or device;

- (3) A patient’s physician may refuse to prescribe opiate medication for a patient who requests a treatment for severe acute pain or severe chronic pain. However, that physician may inform the patient of physicians who are qualified to treat severe acute pain and severe chronic pain employing methods that include the use of opiates;
- (4) A physician who uses opiate therapy to relieve severe acute pain or severe chronic pain may prescribe a dosage deemed medically necessary to relieve the pain;

- (5) A patient may voluntarily request that the patient's physician provide an identifying notice of the prescription for purposes of emergency treatment or law enforcement identification; and
- (6) Nothing in this section shall be construed to:
 - (A) Expand the authorized scope of practice of any licensed physician;
 - (B) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices; and
 - (C) Prohibit the discipline or prosecution of a licensed physician for:
 - (i) Failing to maintain complete, accurate, and current records that document the physical examination and medical history of a patient, the basis for the clinical diagnosis of a patient, and the treatment plan for a patient;
 - (ii) Writing false or fictitious prescriptions for controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et seq. or in chapter 329;
 - (iii) Prescribing, administering, or dispensing pharmaceuticals in violation of the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 et seq. or of chapter 329;
 - (iv) Diverting medications prescribed for a patient to the licensed physician's own personal use; and
 - (v) Causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual; provided that it is not "causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual" to prescribe, dispense, or administer medical treatment for the purpose of treating severe acute pain or severe chronic pain, even if the medical treatment may increase the risk of death, so long as the medical treatment is not also furnished for the purpose of causing, or the purpose of assisting in causing, death for any reason."

SECTION 2. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§453- Pain management guidelines. The board of medical examiners may establish guidelines for physicians with respect to patients' pain management. The guidelines shall apply to all patients with severe acute pain or severe chronic pain, regardless of the patient's prior or current chemical dependency or addiction, and may include standards and procedures for chemically dependent individuals."

SECTION 3. Chapter 460, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§460- Pain management guidelines. The board of medical examiners may establish guidelines for osteopathic physicians with respect to patients' pain management. The guidelines shall apply to all patients with severe acute pain or severe chronic pain, regardless of the patient's prior or current chemical dependency or addiction, and may include standards and procedures for chemically dependent individuals."

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SECTION 4. New material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2004.

(Approved July 9, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 190

H.B. NO. 2005

A Bill for an Act Relating to Prescription Drugs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that costly prescription drugs are sometimes wasted because once they have been dispensed, they may not be used by anyone other than the individual for whom the medication was prescribed. Unused drugs could be provided to the needy and other individuals who lack the means to obtain prescription drugs.

The purpose of this Act is to:

- (1) Establish a mechanism to encourage donations to repositories that will provide prescription drugs to the needy and other state residents who lack the means to obtain the amounts or types of prescription drugs prescribed for them by a health care provider;
- (2) Prevent the waste of prescription drugs by allowing these drugs to be reused by institutional facilities, upon meeting certain conditions; and
- (3) Allow donated drugs not used or accepted by repositories in the state for use outside of the state.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER RETURN-FOR-CREDIT-AND-REUSE OF PRESCRIPTION DRUGS

§ -1 **Definitions.** For the purposes of this chapter:

“Institutional facility” means an organization or facility whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, and that uses the services of an on-site pharmacy, an off-site pharmacy, or a pharmacist contractor at which medication storage is managed by personnel of the facility. “Institutional facility” includes but is not limited to a:

- (1) Hospital;
- (2) Convalescent home;
- (3) Skilled nursing facility;
- (4) Intermediate care facility;
- (5) Extended care facility;
- (6) Rehabilitation center;
- (7) Health maintenance organization clinic;
- (8) Psychiatric center;
- (9) Mental retardation center;
- (10) Penal institution;
- (11) Hospice facility;

- (12) Supervised living group; or
- (13) Prescribing practitioner's office.

"Pharmacy" means a place of business operating as a pharmacy as permitted under chapter 461.

"Return-for-credit-and-reuse" as it pertains to prescription drugs means the process by which prescription drugs dispensed by the dispensing pharmacy of an institutional facility are safely returned to that pharmacy and redispensed for purposes of patient or resident care, or both, which process includes the appropriate crediting of the cost of returned drugs to the payer, less handling fees to providers where applicable, recordkeeping, and the return of the drugs to pharmacy stock for redispensing.

§ -2 Return-for-credit-and-reuse of prescription drugs. (a) Previously dispensed prescription drugs may be returned to the dispensing pharmacy for credit to the payer and subsequent reuse as provided by this chapter; provided that:

- (1) The prescription drug:
 - (A) Is in its original dispensed, unopened, untampered multiple dose container or unopened, untampered single user unit;
 - (B) Has remained at all times under the control or direction of a person in the institutional facility or the pharmacy trained and knowledgeable in the storage of drugs, including periods in transit by any carrier for hire or person or entity hired solely to transport prescription drugs;
 - (C) Is not adulterated or misbranded;
 - (D) Has been stored under conditions meeting United States Pharmacopoeia standards;
 - (E) Is returned and redispensed or redistributed before the expiration date or use by date on the multiple dose container or single user unit;
 - (F) Has not been in the possession of an individual member of the public;
 - (G) Is not included within the classification of controlled substances, as defined in applicable federal and state laws; and
 - (H) Is first offered for donation to a drug repository entity pursuant to chapter 328C for local distribution for needy persons;
- (2) Appropriate credits and handling fees are applied;
- (3) Appropriate recordkeeping provides for documentation of receipt, transfer, and credit;
- (4) The prescription drugs are returned only to the original dispensing pharmacy; and
- (5) Prescription drugs from individual members of the public are not accepted for reuse.

(b) Prescription drugs are not appropriate for return-for-credit-and-reuse and shall not be returned for credit under this chapter under conditions which include but are not limited to the following:

- (1) Product valuation is less than the handling fee;
- (2) Market demand makes reuse implausible by the expiration date or use by date;
- (3) The product prescription number or patient identifier is not discernable, therefore credit to the payer is not possible; or
- (4) The prescription drugs are in containers that do not have a tamperproof seal demonstrating that it has never before been opened.

(c) Prescription drugs that are not returnable for credit may be donated as provided in chapter 328C.

§ -3 Credit and reimbursement for handling returned drugs. (a) Prescription drugs that have been refused on delivery and are returned to the dispensing pharmacy shall be credited to the payer in full and shall not be subject to a handling fee.

(b) If prescription drugs returned to the dispensing pharmacy have been previously billed to the payer, the payer shall be credited for the quantity of drugs returned, not including the original dispensing fee, and less any handling fee. An appropriate handling fee, not to exceed the institutional facility's actual cost of processing returned prescription drugs and the receiving pharmacy's actual cost of receiving and processing returned prescription drugs, shall be established by the department of human services. The handling fee shall not reduce the credit amount below zero. Dispensed and billed drugs with a valuation below the handling fee shall not be returnable for credit under this chapter.

(c) The pharmacy shall reimburse the institutional facility for the proper storage and recordkeeping of returned drugs from the handling fee as determined in subsection (b), if any.

(d) Returned prescription drugs may be sold by prescription subject to the provisions of this chapter.

§ -4 Recordkeeping. (a) The institutional facility shall keep records of all previously dispensed prescription drugs returned to the dispensing pharmacy. Records shall be retained for five years and shall include at least the following:

- (1) The name and address of the institutional facility;
- (2) The prescription number or other patient or payer identifier;
- (3) The name and strength of the drug;
- (4) The name of the manufacturer or the national drug code;
- (5) The quantity of the drug;
- (6) The expiration date or use by date;
- (7) The date the drug was sent to the pharmacy, repository entity, or any other agent for final disposition;
- (8) The name of the pharmacy, repository entity, or any other agent that received or is to receive the drug for final disposition and a description of the disposition, such as returned-for-credit-and-reuse, donated, disposed, or destroyed;
- (9) The initials of the person making the entry; and
- (10) Certification of the reason for the return of the prescription drug by a prescribing practitioner.

(b) Records of drugs to be returned-for-credit-and-reuse shall be copied by the institutional facility and used as a manifest for products sent to the recipient pharmacy. The manifest and products shall be reviewed by the pharmacy prior to accepting or receiving all products to ensure that products are returnable for credit. Any discrepancies shall be noted and corrected by the recipient pharmacy. The accepted manifest noting any corrections shall be retained for five years by both the institutional facility and the pharmacy. Records may be electronically composed, stored, and maintained in a form retrievable and printable for audit purposes. Returned product manifests shall be reconcilable with credits to payers.

(c) All institutional facility and pharmacy records required by this chapter shall be subject to audit by agents of the director of human services or director of health.

§ -5 Pharmacy certification requirements. (a) A high managerial agent acting on behalf of the pharmacy shall cause to be filed, with the designated state agency responsible for administering the medicaid program, a certified transaction

account detailing every transaction under this chapter. The certified transaction account shall include the following information relative to each drug returned:

- (1) If the transaction involved medicaid:
 - (A) The medicaid provider number of the pharmacy;
 - (B) The medicaid provider number of the institutional facility;
 - (C) The name and beneficiary identification number of the medicaid beneficiary to whom the returned drug was originally prescribed;
 - (D) The name and provider number of the physician who originally prescribed the drug;
 - (E) The NDC number appearing on the original prescription;
 - (F) The lot number, if available;
 - (G) The medicaid claim number of the original prescription;
 - (H) The medicaid transaction number of the credit for the returned drug; and
 - (I) The reason for the return of the drug;
- (2) If the transaction involves the federal medicare program:
 - (A) A copy of the 204-claim form, or its then existing equivalent, detailing the original transaction;
 - (B) Documentation of the corresponding credit to the federal medicare program; and
 - (C) Any other information required by the federal administrators of the medicare program; and
- (3) If the transaction involves a private pay patient in an institutional facility, a certification that the payer was properly credited.

(b) The same agent who filed the certification under this section shall concurrently certify that no drugs, other than those detailed in the transaction account, were returned to the pharmacy during that quarter. The agent shall further certify that all drugs accepted for return were either safe for resale, or were disposed of in accordance with the laws of this state and federal laws governing disposal of medication.

(c) The quarterly certifications shall be filed no later than April 1, July 1, October 1, and December 31 of each calendar year.

(d) For purposes of this section, "high managerial agent" has the same meaning as provided in section 702-229(3).

§ -6 Rules. The department of human services and the department of health shall each create and adopt such rules as may be necessary to carry out the purposes and enforce the provisions of this chapter.

§ -7 Exception to liability. No pharmaceutical manufacturer shall be liable for any claim or injury arising from the return and reuse of any prescription drug pursuant to this chapter, including but not limited to liability for failure to transfer or communicate product or consumer information or expiration date information regarding the transferred drug."

SECTION 3. Chapter 328C, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§328C- Donated drugs repository. (a) Prescription drugs that meet the requirements of section 461- , but are otherwise not appropriate for return-for-credit-and-reuse as defined in section -2, may be donated to repository entities. Prescription drugs from individual members of the public shall not be accepted for donation.

(b) Donations to repository entities shall be made without credit to the original payer for the cost of the drugs.

(c) Prescription drugs donated to a repository shall have the patient's name removed or redacted from the product, including the label.

(d) Drugs donated under this section that are not used or accepted by a repository in the state of Hawaii may be distributed to repositories for use outside of the state.

§328C- Recordkeeping. (a) All previously dispensed prescription drugs donated to repository entities shall be recorded by the institutional facility. Records shall be retained by the institutional facility for five years and shall include the following information:

- (1) The name and address of the donating institutional facility;
- (2) The name and strength of the drug;
- (3) The name of the manufacturer or the national drug code;
- (4) The quantity of the drug;
- (5) The expiration or use by date of the drug;
- (6) The date the drug was sent to the repository entity or any other agent for final disposition;
- (7) The name of the repository entity, or any other agent that received or is to receive the drug for final disposition and a description of the disposition, such as donated, disposed, or destroyed; and
- (8) The initials of the person making the entry.

(b) The institutional facility's records of drugs subject to donation to repository entities shall be copied and used as a manifest for the products sent to the recipient repository entity.

(c) All institutional facility and repository records shall be subject to audit by agents of the director of human services or director of health."

SECTION 4. Section 328C-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

"Pharmaceutical company" means any company that manufactures pharmaceuticals and health care supplies.

"Pharmacy" has the same meaning as provided in section 461-1.

"Prescription drug" means:

- (1) Any drug required by federal or state statutes, regulations, or rules to be dispensed only upon prescription, including finished dosage forms and active ingredients subject to section 328-16 or section 503(b) of the Federal Food, Drug, and Cosmetic Act; or
- (2) Any drug product compounded or prepared pursuant to the order of a practitioner, as defined in section 461-1.

"Repository" means:

- (1) A charitable, religious, or nonprofit organization as defined in section 328C-1, licensed as a wholesale prescription drug distributor pursuant to section 461-8.6; or
- (2) A foreign medical aid mission group that distributes pharmaceuticals and healthcare supplies to needy persons abroad."

SECTION 5. Chapter 461, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§461- Return of prescription drugs. Prescription drugs previously dispensed or distributed by a pharmacy for administration to patients in an institu-

tional facility by personnel of the institutional facility may be returned to and redispensed or redistributed by the pharmacist if the prescription drug:

- (1) Is in:
 - (A) Its original dispensed, unopened, untampered multiple dose container or unopened, untampered single user unit; or
 - (B) An in-use multiple dose container subject to appropriate safeguards as defined in rules for public health or operational considerations;
- (2) Has remained at all times under the control or direction of a person in the institutional facility or the pharmacy trained and knowledgeable in the storage of drugs, including periods in transit by any carrier for hire or person or entity hired solely to transport prescription drugs;
- (3) Is not adulterated or misbranded;
- (4) Has been stored under conditions meeting United States Pharmacopoeia standards;
- (5) Is returned and redispensed or redistributed before the expiration date or use by date on the multiple dose container or single user unit;
- (6) Has not been in the possession of an individual member of the public; and
- (7) Is not included within the classification of controlled substances, as defined in applicable federal and state laws.

Nothing in this subsection shall be construed to relieve any person from any requirement prescribed by law with respect to drugs included or that may be included within the classification of controlled substances, as defined in applicable federal and state laws. Previously billed returned drugs shall be subject to crediting to the payer pursuant to chapter ."

SECTION 6. Section 461-1, Hawaii Revised Statutes, is amended by adding eight new definitions to be appropriately inserted and to read as follows:

"Institutional facility" means an organization or facility whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, and that uses the services of an on-site pharmacy, an off-site pharmacy, or a pharmacist contractor at which medication storage is managed by personnel of the facility. "Institutional facility" includes but is not limited to a:

- (1) Hospital;
- (2) Convalescent home;
- (3) Skilled nursing facility;
- (4) Intermediate care facility;
- (5) Extended care facility;
- (6) Rehabilitation center;
- (7) Health maintenance organization clinic;
- (8) Psychiatric center;
- (9) Mental retardation center;
- (10) Penal institution;
- (11) Hospice facility;
- (12) Supervised living group; or
- (13) Prescribing practitioner's office.

"Multiple dose container" means a multiple unit container for articles intended for parenteral administration only.

"Multiple unit container" means a container that permits withdrawal of successive portions of the contents without changing the strength, quality, or purity of the remaining portion.

“Single dose container” means a single unit container for articles intended for parenteral administration only. A single dose container is labeled as such. Examples of single dose containers include pre-filled syringes, cartridges, fusion sealed containers, and closure-sealed containers when so labeled.

“Single unit container” is one that is designed to hold a quantity of drug product intended for administration as a single dose or a single finished device intended for use promptly after the container is opened. Preferably, the immediate container and the outer container or protective packaging shall be so designed as to show evidence of any tampering with the contents. Each single unit container shall be labeled to indicate the identity, quantity and strength, name of the manufacturer, lot number, and expiration date of the article.

“Single user unit” means any single unit container, single dose container, unit dose container, unit of use container, or multiple unit container provided for the exclusive use by a single patient.

“Unit dose container” means a single unit container for articles intended for administration by other than the parenteral route as a single dose, direct from the container.

“Unit of use container” means one that contains a specific quantity of a drug product and that is intended to be dispensed as such without further modification except for the addition of appropriate labeling. A unit of use container is labeled as such.”

SECTION 7. Section 328C-2, Hawaii Revised Statutes, is amended to read as follows:

“§328C-2 Exceptions to liability. (a) A charitable, religious, or nonprofit organization which in good faith receives pharmaceuticals or health care supplies, apparently fit for human consumption or external use, and distributes them to needy persons at no charge, shall not be liable for any civil damages or criminal penalties resulting from the use of the pharmaceuticals or health care supplies donated to needy persons unless an injury or illness results to those needy persons as a result of that organization’s gross negligence or wanton acts or omissions.

(b) Any pharmacy, wholesale prescription drug distributor, pharmaceutical company, institutional facility, or practitioner that in good faith provides pharmaceuticals, including previously dispensed prescription drugs, and health care supplies to needy persons without remuneration or expectation of remuneration, shall be exempt from civil liability for injuries and damages resulting from their acts or omissions in providing pharmaceuticals and health care supplies, except for gross negligence, or wanton acts or omissions on the part of the pharmacy, wholesale prescription drug distributor, pharmaceutical company, institutional facility, or practitioner.

(c) Any donated, previously dispensed, prescription drug:

- (1) Shall be in its dispensed, unopened, tamper-evident single user unit;
- (2) Shall have remained at all times in the control of a person trained and knowledgeable in the storage and administration of drugs in institutional facilities;
- (3) Shall not have been adulterated, misbranded, or stored under conditions contrary to standards established by the United States Pharmacopoeia or the product manufacturer; ~~and~~
- (4) Shall be used before the expiration date on the unit[-];
- (5) Shall not have been in the possession of an individual member of the public; and
- (6) Shall not be included within the classification of controlled substances, as defined in applicable federal and state laws.

(d) This section shall not relieve any organization from any other duty imposed upon it by law for the inspection of donated pharmaceuticals or health care supplies or for any provisions regarding the handling of those products, or relieve any health care provider from liability arising out of the prescription of such pharmaceuticals or health care supplies.

[(e) For purposes of this section:

~~“Needy person” means any natural person who lacks the means to obtain adequate or proper pharmaceuticals or health care supplies as determined by a practitioner at a Hawaii-qualified health center established under section 346-41.5, to be in need of service.~~

~~“Pharmaceuticals and health care supplies” means any medicine (prescription or nonprescription, excluding all controlled substances listed in chapter 329) or health care supplies such as soap, personal sanitary products, baby formula, dietary supplement, health care aids such as thermometers, surgical gloves, or bandages, or any other item that is customarily fit for human consumption or external use, before the expiration date stamped on the product, if any.~~

~~“Pharmaceutical company” means any company that manufactures pharmaceuticals and health care supplies.~~

~~“Pharmacy” is as defined in chapter 461.]~~

(e) No pharmaceutical manufacturer shall be liable for any claim or injury arising from the donation and transfer of any prescription drug pursuant to this chapter, including but not limited to liability for failure to transfer or communicate product or consumer information or expiration date information regarding the transferred drug.”

SECTION 8. The department of health shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2006 reporting:

- (1) Difficulties with the implementation and operation of the prescription drug repository program, if any;
- (2) Potential for expansion to include drugs donated by private individuals;
- (3) Possible strategies to provide incentives for dispensing pharmacies or institutional facilities to provide donations of prescription drugs to repositories; and
- (4) Suggested legislation.

SECTION 9. The return-for-credit-and-reuse of prescription drugs authorized by this Act shall not be implemented until appropriate administrative rules to address the crediting and handling fee processes are adopted and take effect. Returns for full credit with no handling fees of prescription drugs refused on delivery shall not require rulemaking.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect on July 1, 2004, and shall be repealed on July 1, 2010; provided that sections 328C-1, 328C-2, and 461-1, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved July 9, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Automatic External Defibrillators.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 663-1.5, Hawaii Revised Statutes, is amended to read as follows:

“§663-1.5 Exception to liability. (a) Any person who in good faith renders emergency care, without remuneration or expectation of remuneration, at the scene of an accident or emergency to a victim of the accident or emergency shall not be liable for any civil damages resulting from the person’s acts or omissions, except for such damages as may result from the person’s gross negligence or wanton acts or omissions.

(b) No act or omission of any rescue team or physician working in direct communication with a rescue team operating in conjunction with a hospital or an authorized emergency vehicle of the hospital or the State or county, while attempting to resuscitate any person who is in immediate danger of loss of life, shall impose any liability upon the rescue team, the physicians, or the owners or operators of such hospital or authorized emergency vehicle, if good faith is exercised.

~~[For the purposes of this section, “rescue team” means a special group of physicians, basic life support personnel, advanced life support personnel, surgeons, nurses, volunteers, or employees of the owners or operators of the hospital or authorized emergency vehicle who have been trained in basic or advanced life support and have been designated by the owners or operators of the hospital or authorized emergency vehicle to attempt to provide such support and resuscitate persons who are in immediate danger of loss of life in cases of emergency.]~~

This section shall not relieve the owners or operators of the hospital or authorized emergency vehicle of any other duty imposed upon them by law for the designation and training of members of a rescue team or for any provisions regarding maintenance of equipment to be used by the rescue team or any damages resulting from gross negligence or wanton acts or omissions.

(c) Any physician licensed to practice under the laws of this State or any other state who in good faith renders emergency medical care in a hospital to a person, who is in immediate danger of loss of life, without remuneration or expectation of remuneration, shall not be liable for any civil damages, if the physician exercises that standard of care expected of similar physicians under similar circumstances.

(d) Any person or other entity who as a public service publishes written general first aid information dealing with emergency first aid treatment, without remuneration or expectation of remuneration for providing this public service, shall not be liable for any civil damages resulting from the written publication of such first aid information except as may result from its gross negligence or wanton acts or omissions.

(e) Any person who successfully completes training under ~~[an]~~ any automatic external defibrillator program administered by a physician ~~[and as defined pursuant to section 453-2]~~ shall not be liable for any civil damages resulting from any act or omission while attempting in good faith, without remuneration or expectation of remuneration, to resuscitate a person in immediate danger of loss of life when administering ~~[an]~~ any automatic external defibrillator, regardless of where the automatic external defibrillator that is used is located, except as may result from the person’s gross negligence or wanton acts or omissions.

[No] Any person, including an employer, who establishes an automatic external defibrillator program shall not be liable for any civil damages resulting from any act or omission of the persons or employees trained under the program who, in good faith and without remuneration or the expectation of remuneration, attempt to resuscitate a person in immediate danger of loss of life by administering an automatic external defibrillator.

(f) Any physician who administers an automatic external defibrillator program without remuneration or expectation of remuneration shall not be liable for any civil damages resulting from any act or omission involving the use of an automatic external defibrillator, except as may result from the physician's gross negligence or wanton acts or omissions.

~~[(f)]~~ (g) This section shall not relieve any person, physician, or employer of:

- (1) Any other duty imposed by law regarding the designation and training of persons or employees;
- (2) Any other duty imposed by provisions regarding the maintenance of equipment to be used for resuscitation; or
- (3) Liability for any damages resulting from gross negligence, or wanton acts or omissions.

(h) For the [purpose] purposes of this section[~~-, "good"]:~~

"Automatic external defibrillator program" shall have the meaning provided in section 453-2(b)(5)(B).

"Good faith" [is used to include] includes but is not limited to a reasonable opinion that the immediacy of the situation is such that the rendering of care should not be postponed.

"Rescue team" means a special group of physicians, basic life support personnel, advanced life support personnel, surgeons, nurses, volunteers, or employees of the owners or operators of the hospital or authorized emergency vehicle who have been trained in basic or advanced life support and have been designated by the owners or operators of the hospital or authorized emergency vehicle to attempt to provide such support and resuscitate persons who are in immediate danger of loss of life in cases of emergency."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 9, 2004.)

ACT 192

H.B. NO. 2098

A Bill for an Act Relating to Medical Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 622-57, Hawaii Revised Statutes, is amended to read as follows:

"§622-57 Availability of medical records. (a) If a patient of a health care provider as defined in section 671-1, requests copies of ~~[his or her]~~ the patient's medical records, the copies shall be made available to the patient unless, in the opinion of the health care provider, it would be detrimental to the health of the patient to obtain the records. If the health care provider is of the opinion that release

of the records to the patient would be detrimental to the health of the patient, the health care provider shall advise the patient that copies of the records will be made available to the patient's attorney upon presentation of a proper authorization signed by the patient.

(b) If an attorney for a patient asks a health care provider for copies of the patient's medical records and presents a proper authorization from the patient for the release of the information, complete and accurate copies of the records shall be given to the attorney within a reasonable time not to exceed ten working days.

(c) In the case of a deceased person, a personal representative of the deceased person's estate may obtain copies of or may authorize the health care provider to release copies of the deceased person's medical records upon presentation of proper documentation showing the personal representative's authority.

If no personal representative has been appointed, the deceased person's next of kin in order of superseding priority, without court order, may obtain copies of or may authorize the health care provider to release copies of the deceased person's medical records, except as otherwise provided in this subsection and subsections (d) and (e). A deceased person's next of kin possesses superseding priority when all kin ranked higher in the order listed in the definition of "deceased person's next of kin" are deceased or incapacitated. When there are multiple persons at the same level of superseding priority, all such persons shall be entitled to request and obtain the records. The person claiming to be next of kin of a deceased person and requesting the deceased person's medical records shall submit to the medical provider from whom the records are requested, an affidavit attesting to status as next of kin with superseding priority. The medical provider may rely upon the affidavit, and in so doing, shall be immune to any claims relating to release of the medical records.

(d) Notwithstanding applicable state confidentiality laws governing the following types of specially protected health information, a health care provider may honor, in whole or in part, a request by the deceased person's next of kin for release of medical records if the medical records of the deceased person contain references pertaining to any of the following types of specially protected health information:

- (1) HIV infection, AIDS, or AIDS-related complex;
- (2) Diagnosis or treatment of a mental illness; or
- (3) Participation in a substance abuse treatment program.

(e) A health care provider shall refuse a request by the deceased person's next of kin for release of medical records if the deceased person had previously indicated to the medical provider in writing that the person did not wish to have medical records released to next of kin.

(f) Notwithstanding subsections (c) through (e), any medical records of a deceased person may be produced pursuant to a court order specifically compelling release.

(g) Reasonable costs incurred by a health care provider in making copies of medical records shall be borne by the requesting person.

(h) For the purposes of this section:

"Deceased person's next of kin" means a person with the following relationship to the deceased person:

- (1) The spouse or reciprocal beneficiary;
- (2) An adult child;
- (3) Either parent;
- (4) An adult sibling;
- (5) A grandparent; and
- (6) A guardian at the time of death.

"Personal representative" shall have the meaning provided in section 560:1-201."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 9, 2004.)

ACT 193

H.B. NO. 2206

A Bill for an Act Relating to Controlled Substances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 329, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§329- Requirements when selling specific chemicals. (a) Any manufacturer, wholesaler, retailer, or other person in this State who sells to any person in this State or any other state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, paladium black, red phosphorus, white phosphorus (other names yellow phosphorus), iodine, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride, notwithstanding any other provision of law, shall do the following:

- (1) Require proper purchaser identification for in-state sales that shall include a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, the Environmental Protection Agency certification number or general excise tax license number assigned to the individual or business entity for which the individual is purchasing any chlorofluorocarbon product, and the signature of the purchaser. Proper purchaser identification for out-of-state sales shall include all of the above information, except the motor vehicle license number and the signature of the purchaser. The out-of-state sale information shall also include the means by which the purchase was delivered or provided to the purchaser and the delivery address, if different from the identification address provided by the purchaser;
- (2) Prepare a bill of sale that both describes with particularity the specific items and quantities sold and sets forth the proper purchaser identification information and affix to the bill of sale the preparer's signature as witness to the sale and identification of the purchaser;
- (3) Retain the original bill of sale containing the purchaser identification information for at least three years in a readily producible manner, and produce the bill of sale containing the sale information and purchaser identification information upon demand by any law enforcement officer or authorized representative of the department; and
- (4) Submit a report to the department of public safety of all sales covered by this section.

(b) Any manufacturer, wholesaler, retailer, or other person in this State who purchases any item listed in subsection (a) shall do the following:

- (1) Prepare a record of the purchase including information identifying the source of the items purchased, the date of purchase, the specific items purchased, the quantities of each item purchased, and the cost of the items purchased; and
- (2) Retain the record of purchase for at least three years in a readily producible manner and produce the record of purchase upon demand to any law enforcement officer or authorized representative of the department.

(c) Additional requirements for manufacturers, wholesalers, retailers, or other persons who sell iodine or red or white phosphorous are as follows:

- (1) Except as provided in subsection (d), no manufacturer, wholesaler, retailer, or other person shall sell to any individual, and no individual shall buy, more than four ounces of iodine in any thirty-day period; and
- (2) Except as provided in subsection (d), no manufacturer, wholesaler, retailer, or other person shall sell to any individual, and no individual shall buy, more than two ounces of red or white phosphorous in any thirty day period. This paragraph shall not apply to any sale of red phosphorous made to a person or business that is licensed or regulated by state or federal law with respect to the purchase or use of red or white phosphorous.

(d) The requirements of this section do not apply to either of the following:

- (1) Any sale of iodine at concentrations less than 1.5 per cent by weight in a solution or matrix under the threshold of two ounces in a single transaction; or
- (2) Any sale of iodine made to a licensed health care facility, any manufacturer licensed by the department of health, or wholesaler licensed by the Hawaii state board of pharmacy who sells, transfers, or otherwise furnishes the iodine to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(e) A person violating this section shall be guilty of a misdemeanor and fined not more than \$100,000.

§329- Rules. The department of public safety may adopt rules and assess reasonable fees relating to the registration and control of the sale, distribution, or possession of regulated chemicals under part VI of chapter 329.’’

SECTION 2. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;
- (2) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;
- (3) Any substance that contains any quantity of a derivative of barbituric acid or any salt thereof, including the substance butalbital;
- (4) Chlorhexadol;

- (5) Ketamine [~~hydrochloride~~], its salts, isomers, and salts of isomers, also known as (+ or -)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;
- (6) Lysergic acid;
- (7) Lysergic acid amide;
- (8) Methypylon;
- (9) Sulfondiethylmethane;
- (10) Sulfonethylmethane;
- (11) Sulfonmethane; [and]
- (12) Tiletamine/Zolazepam (Telazol, 2-(ethylamino)-2-(-thienyl)-cyclohexanone, flupyrzapon) or any salts thereof[.]; and
- (13) Gamma hydroxybutyric acid and its salts, isomers, and salts of isomers that are contained in a drug product for which an application has been approved under section 505 of the federal Food, Drug, and Cosmetic Act."

SECTION 3. Section 329-61, Hawaii Revised Statutes, is amended to read as follows:

"§329-61 Substances subject to reporting. (a) List 1 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this State or for use in this State shall submit a report to the department of all those transactions:

- (1) Phenyl-2-propanone;
- (2) Methylamine and its salts;
- (3) Phenylacetic acid, its esters and salts;
- (4) Ephedrine, its salts, optical isomers, and salts of optical isomers;
- (5) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (6) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (7) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
- (8) Hydriodic acid;
- (9) Benzyl cyanide;
- (10) Benzyl chloride;
- (11) N-methylformamide;
- (12) N-methylephedrine, its salts, optical isomers, and salts of optical isomers;
- (13) N-ethylephedrine;
- (14) N-ethylpseudoephedrine;
- (15) N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (16) Chloroephedrine;
- (17) Chloropseudoephedrine;
- (18) Ethylamine;
- (19) D-lysergic acid;
- (20) Ergotamine and its salts;
- (21) Piperidine and its salts;
- (22) N-acetylanthranilic acid, its esters and salts;
- (23) Anthranilic acid, its esters and salts;
- (24) Propionic anhydride;
- (25) Isosafrole;
- (26) Safrole;
- (27) Piperonal;

- (28) Thionychloride;
- (29) Ergonovine and its salts;
- (30) 3,4-Methylenedioxyphenyl-2-propanone;
- (31) Benzaldehyde;
- (32) Nitroethane;
- (33) Red phosphorus;
- (34) Iodine crystals;
- (35) Iodine at concentrations greater than 1.5 per cent by weight in a solution or matrix above the threshold of two ounces in a single transaction;
- (36) Gamma butyrolactone (GBL) including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone; and 4-hydroxybutanoic acid lactone with chemical abstract service number 96-48-0;
- (37) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; and tetramethylene; 1,4-diol;
- (38) Hypophosphorous acid and its salts (including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite);
- (39) White phosphorus (other names yellow phosphorus); and
- (40) Anhydrous ammonia.

(b) List 2 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any extraordinary quantity of any of the following chemicals, or sells, transfers, or otherwise furnishes the chemicals through the use of an uncommon method of payment or delivery or under any other circumstances that may make that person believe that the following chemicals could be used in violation of this part by any person in this State, shall report to the department all those transactions of:

- (1) Acetic anhydride;
- (2) Acetone;
- (3) Ethyl ether;
- (4) Potassium permanganate;
- (5) 2-Butanone (or methyl ethyl ketone or MEK);
- (6) Toluene;
- (7) Hydrochloric acid;
- (8) Sulfuric acid;
- (9) Methyl isobutyl ketone (MIBK);
- (10) Hydrogen chloride; and
- (11) Methyl sulfone (MSM, DMS, Dimethyl sulfone or DMSO2).

(c) Additional chemicals. If a chemical is added or deleted as a regulated list 1 or list 2 chemical under federal law and notice of the designation is given to the department, the department may recommend that a corresponding change be made to state law. The department of public safety shall designate the chemical as added or deleted under this chapter after the expiration of thirty days from publication in the Federal Register of a final order and the change shall have the effect of law. If a chemical is added or deleted under this subsection, the control shall be temporary and, if the temporary designation of the added or deleted chemical is not permanently enacted in corresponding changes to this chapter at the next regular session of the legislature, the temporary designation shall be nullified.

(d) The department of public safety shall adopt rules pursuant to chapter 91 necessary for the purposes of this section; provided the rules adopted to add or subtract to list 1 or list 2 may be adopted without regard to chapter 91.

SECTION 4. Section 712-1240, Hawaii Revised Statutes, is amended by amending the definitions of “dangerous drugs” and “harmful drug” to read as follows:

““Dangerous drugs” means any substance or immediate precursor defined or specified as a “Schedule I substance” or a “Schedule II substance” by chapter 329, or a substance specified in section 329-18(c)(13), except marijuana or marijuana concentrate.

“Harmful drug” means any substance or immediate precursor defined or specified as a “Schedule III substance” or a “Schedule IV substance” by chapter 329, or any marijuana concentrate except marijuana[-] and a substance specified in section 329-18(c)(13).”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved July 9, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 194

H.B. NO. 1780

A Bill for an Act Relating to Employment.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 78-31, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§78-31]]~~ **Paid leave; education of children.** Employees shall be eligible for ~~[at least]~~ up to two hours of paid leave during normal business hours to attend either:

- (1) A mutually-scheduled parent-teacher conference for the employee’s ~~[minor]~~ child attending a public or private school in grades kindergarten through twelve; or
- (2) A mutually-scheduled parent-caregiver conference for a preschool-aged child attending a licensed group child care center, as defined under section 346-151;

provided that the time-off shall not be credited against vacation or sick leave benefits, if any; and provided further that the provision of paid leave shall not adversely interfere with the operations of the work unit nor require the applicable agency to incur additional human resources or overtime costs.

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The employee shall take no more than two mutually-scheduled conferences, per child, in a single calendar year. Travel time shall be included as part of the two hours permitted for each conference.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 9, 2004.)

ACT 195

H.B. NO. 1848

A Bill for an Act Relating to Exceptional Trees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that an exceptional tree is a tree with historic or cultural value or that, by reason of its age, rarity, location, size, esthetic quality, or endemic status, is worthy of preservation. Such exceptional trees benefit the community at large, as well as the individual property owner. The purpose of this Act is to provide property owners with a tax incentive to maintain any tree on their property that has been designated as an exceptional tree.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Exceptional trees; tax deduction. (a) Subject to subsection (b), there shall be allowed as a deduction from gross income the amount, not to exceed \$3,000 per exceptional tree, for amounts paid, excluding interest paid or accrued thereon, during the taxable year by an individual taxpayer for expenditures to maintain, on the taxpayer’s real property, each exceptional tree that has been designated by the county arborist advisory committee under chapter 58 as an exceptional tree.

(b) No deduction shall be allowed to exceed the amount of expenditures deemed reasonably necessary by a certified arborist. No deduction shall be allowed in more than one taxable year out of every three consecutive taxable years.

(c) The director of taxation shall prepare such forms as may be necessary to claim a tax deduction under this section, may require proof of the claim for the tax deduction, including an affidavit signed by the certified arborist, and may adopt rules pursuant to chapter 91.

(d) For the purpose of this section, the term “exceptional tree” shall have the same meaning as defined in section 58-3.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval, and shall apply to amounts paid in taxable years beginning after December 31, 2003.

(Approved July 9, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 196

H.B. NO. 2547

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 304-16.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any law to the contrary notwithstanding, the board of regents may authorize expenditures of up to \$3,000,000 annually, excluding in-kind services, from this fund for the [purpose] purposes of promoting alumni relations and generating private donations for deposit into the University of Hawaii Foundation for the purposes of the university. Any expenditure authorized pursuant to this subsection shall be for a public purpose and shall not be subject to chapters 42F, 103, 103D, and 103F. The university shall submit a comprehensive report to the legislature [every regular session] detailing the use of any funds authorized by the board under this subsection[-] no later than twenty days prior to the convening of each regular session.

The report shall:

- (1) Identify each department of the University of Hawaii Foundation supported by moneys from the fund;
- (2) Describe the purposes and activities of each department identified in paragraph (1) and how it participates in fundraising activities and benefits the university;
- (3) Provide the total expenditures of each department identified in paragraph (1) by primary expense categories;
- (4) Identify all moneys from the fund transferred to any fund of the university and provide a justification of how these moneys are used to benefit the university;
- (5) Provide a financial summary of the operating activities of the University of Hawaii Foundation, including revenues and expenditures by major reporting categories; and
- (6) Identify amounts and purposes of all expenditures from the UH support fund.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved July 9, 2004.)

ACT 197

H.B. NO. 1904

A Bill for an Act Relating to Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The terrorist attacks of September 11, 2001, continue to have repercussions today. Thousands of military service members and their families are grappling with the news of upcoming deployments to dangerous, volatile, and unstable areas of the world, such as Iraq and Afghanistan. In addition, many of those who have already completed one tour of duty face re-deployment in what the United

States Department of Defense describes as the largest series of troop rotations since World War II. For instance, approximately eighty-five thousand regular, United States reserves, and national guard troops will be deployed to Iraq. Such a massive mobilization and deployment of United States forces has not left Hawaii untouched.

Furthermore, four thousand five hundred soldiers from the 25th Infantry Division (Light) based at Schofield Barracks have been ordered to deploy to Iraq by February 2004. In addition, the division is sending three thousand five hundred soldiers to Afghanistan by April 2004. Each of the missions will last at least twelve months—twice as long as previous deployments.

The assigned strength of the Hawaii army national guard and Hawaii air national guard stands at around three thousand and two thousand five hundred, respectively. Since September 11, 2001, more than one thousand two hundred national guard members have been activated, though not necessarily deployed overseas. More than four hundred national guard members have been deployed to areas like Iraq and Afghanistan.

Approximately two thousand five hundred Army reservists are based in Hawaii. About three hundred ninety of the reservists with the 411th engineer battalion are being mobilized for duty in Iraq. It would be the first deployment for the five hundred forty soldier battalion, which includes companies in Alaska and Guam, since World War II.

Many national guard members and United States reserve troops are presently serving in Iraq. Nationwide, there are approximately two hundred thousand reservists, about sixty thousand of whom have been called up to serve in Iraq and Afghanistan.

Even beyond the sheer numbers, however, the effects of the call-up of national guard and reserve forces are substantial. Although national guard members and reservists recognize their duty and are willing to serve their nation, the disruption to their personal and professional lives cannot be denied. Individuals from all walks of life—from college students and engineers to physicians and public servants—are plucked from their daily routines and sent overseas under hostile conditions.

For many, active service in the national guard or the United States reserve entails a significant loss of income. While some financial institutions and lenders are agreeable to working with service members to craft financial arrangements that take into account the reduction in income, the reality remains that rents and mortgages, car payments, child care costs, tuition fees, and a host of other expenses must still be met.

To send national guard members and reservists into harm's way while expecting them to suffer a sharp drop in pay is unduly onerous and highly unfair. Rather, they should be provided as much support as possible and the impact on their lives should be minimized to the greatest extent feasible so that they can focus on accomplishing their mission without needing to worry about matters back at home.

As a beneficiary of their courageous and dedicated service, the State bears a special responsibility toward United States forces, particularly its citizen-soldiers in the national guard and military reserves.

The purpose of this Act is to alleviate, as much as practicable, the burden on citizen-soldiers in the national guard and United States reserves as they serve and protect the nation against its enemies. These patriotic men and women deserve the support of the State.

SECTION 2. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any such express exemption or exclusion;
- (7) ~~[The first \$1,750]~~ Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty[;], equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
 - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
 - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;
 - (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
 - (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
 - (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country, provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft ~~[which]~~ that are documented or registered under the laws of the United States;
- (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal

services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;

- (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents; and
- (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2005.

(Approved July 10, 2004.)

ACT 198

H.B. NO. 680

A Bill for an Act Relating to Ethics.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . MANDATORY ETHICS TRAINING

§84-A Applicability of part. This part applies to legislators, elected members of the board of education, trustees of the office of Hawaiian affairs, the governor, the lieutenant governor, and executive department heads and deputies. This part does not apply to any other officer or employee of the State.

§84-B Mandatory ethics training course. All state officers and employees enumerated in section 84-A shall complete an ethics training course administered by the state ethics commission as provided in this part. For the purposes of this part, "ethics training" includes education and training in:

- (1) The ethics laws set forth in this chapter; and
- (2) The lobbying laws set forth in chapter 97.

§84-C Ethics training course. (a) The state ethics commission shall establish, design, supervise, and conduct ethics training designed specifically for the officers and employees to whom this part applies.

(b) The ethics training course shall include:

- (1) Explanations and discussions of the ethics laws, administrative rules, and relevant internal policies;
- (2) Specific technical and legal requirements;
- (3) The underlying purposes and principles of ethics laws;
- (4) Examples of practical application of the laws and principles; and
- (5) A question-and-answer participatory segment regarding common problems and situations.

The state ethics commission shall develop the methods and prepare any materials necessary to implement the course.

(c) The state ethics commission shall:

- (1) Administer the ethics training course;
- (2) Designate those of its legal staff who are to conduct the ethics training course; and
- (3) Notify each officer or employee enumerated in section 84-A that their attendance in this course is mandatory.

(d) The ethics training course shall be held in January of each year for those who have not attended the course previously. The course shall last at least two hours in length.

(e) The state ethics commission may repeat the course as necessary to accommodate all persons who are required to attend.

(f) Each state agency shall provide to the state ethics commission the names of those required to take the course in a timely manner and assist the commission by providing adequate meeting facilities for the ethics training course.”

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 3. This Act shall take effect on January 1, 2005.

(Approved July 10, 2004.)

ACT 199

S.B. NO. 3190

A Bill for an Act Relating to the Public Utilities Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 271-19, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Certificates and permits shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any certificate or permit [~~may~~], upon application of the holder thereof, in the discretion of the public utilities commission, may be amended or revoked, in whole or in part. The commission [~~may~~], upon complaint or upon its own initiative, after notice and hearing, may suspend or revoke any certificate or permit, in part or in whole, if the holder thereof is found to be in violation of any of the provisions of this chapter; provided that [a]:

- (1) A motor carrier’s right to engage in transportation by virtue of any certificate or permit may be suspended by the commission immediately without hearing or other proceedings upon the carrier’s failure to comply, and until the carrier complies with sections 271-21(a), 271-22(a), 271-17 or Act 20, Special Session Laws of Hawaii 1977, or with any lawful order of the commission[-]; and
- (2) The commission shall revoke the certificate or permit of a holder that knowingly and wilfully engages the services of a driver not licensed under part XIII of chapter 286.”

ACT 200

2. By amending subsection (c) to read:

“(c) No person whose certificate or permit is revoked shall be eligible to apply for a new certificate or permit until the expiration of two years[-]; provided that a person whose certificate or permit is revoked for knowingly and wilfully engaging the services of a driver not licensed under part XIII of chapter 286 shall not be eligible to apply for a new certificate or permit until the expiration of five years.”

SECTION 2. Section 271-38, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~271-38] **Enforcement.** At the request of the public utilities commission, the department of transportation shall assign a motor vehicle safety officer employed by the department of transportation to assist in the enforcement of sections 271-8, 271-12, 271-13, 271-19, and 271-29, through the assessment of civil penalties as provided in section 271-27(h), (i), and (j).”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 10, 2004.)

ACT 200

S.B. NO. 2606

A Bill for an Act Relating to Brewpub Licenses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Class 14. Brewpub licenses. A brewpub licensee:

- (1) Shall manufacture not more than ten thousand barrels of malt beverages on the licensee’s premises during the license year;
- (2) May sell malt beverages manufactured on the licensee’s premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3, wholesale dealer licensees pursuant to conditions imposed by county planning and public works departments;
- (4) May sell intoxicating liquor, purchased from a class 1, manufacturer licensee, or a class 3, wholesale dealer’s licensee, to consumers for consumption on the licensee’s premises; provided that the premises is owned and operated by the licensee.

The categories of establishments shall be as follows:

- (A) A standard bar; or
- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules[-];

- (5) May sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this section, "growler" means a glass container, not to exceed one half-gallon, that may be securely sealed;
- (6) May sell malt beverages manufactured on the licensee's premises to consumers, in glass containers that may be provided by the licensee or by the consumer, not to exceed one gallon per container, that are securely sealed on the licensee's premises, for off-premises consumption;
- (7) Shall comply with all regulations pertaining to class 4 retail licensees when engaging in the retail sale of malt beverages;
- (8) May sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispensers' licensees, class 6 club licensees, class 7, 8, and 9 vessel licensees, transient vessel licensees, tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, and class 13 caterer licensees, pursuant to conditions imposed by county planning and public works departments and regulations governing class 3 wholesale dealers licensees; and
- (9) May conduct the activities described in paragraphs 1 through 8 at one location other than the licensee's premises; provided that the manufacturing takes place in Hawaii; and provided further the other location is properly licensed by the same ownership."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 10, 2004.)

ACT 201

S.B. NO. 3080

A Bill for an Act Relating to Transportation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the September 11, 2001, terrorist attacks on the United States resulted in immediate decreases in the number of visitors to Hawaii. The attacks also increased the level of security and changed the way travelers are processed at Hawaii's airports.

Airport concessions depend in large part on passengers and visitors traveling through Hawaii's airports. The precipitous declines in the number of visitors to Hawaii and in the volume of pedestrian traffic allowed through the airport facilities had an immediate and drastic impact on various airport concessions following the events of September 11, 2001. While the department of transportation has taken steps to grant relief under its recent concession leases, there are still some concession leases in force that do not provide similar relief.

The legislature encourages the governor and department of transportation to provide fair and reasonable lease terms for airport concessions that provide concessionaires with relief in times of economic emergencies. The legislature believes that

this Act provides the governor and department with the discretion and additional flexibility necessary to grant relief.

The purpose of this Act is to:

- (1) Give the governor the ability to grant relief in times of economic emergency, by waiving or modifying the terms of an airport concessionaire's lease and obligations to the State, for those airport concession leases which do not contain provisions for relief; and
- (2) Provide the department of transportation with flexibility to negotiate airport florist and lei greeting service concession leases.

SECTION 2. Section 102-2, Hawaii Revised Statutes, is amended, by amending subsection (b) to read as follows:

“(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beachboy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;
- (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park, and operating under agreement with the appropriate agency solely for such purposes, aims, and goals;
- (10) For operation of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in writing that shall be included in the contract file; [and]
- (11) For operation of concession or concession spaces at the convention center under chapter 201B[-]; and
- (12) For airport florist services, lei greeting services, or florist and lei greeting services.”

SECTION 3. Notwithstanding any law to the contrary, the governor may waive or modify a concessionaire's obligations to the State for airport concession leases in effect prior to September 11, 2001, which remain in effect as of the effective date of this Act and do not provide for adjustment of lease obligations in

response to adverse economic circumstances other than construction. Any relief granted shall be in amounts and upon such terms and conditions as determined by the governor, in the governor's sole discretion. As part of the authority granted to the governor hereunder, the governor or the department of transportation as authorized by the governor, may:

- (1) Renegotiate airport concession leases with concessionaires; and
- (2) Waive or modify any lease obligation or term upon such terms and conditions as the governor shall deem necessary to grant relief.

SECTION 4. If deemed necessary by the governor to implement the grant of relief in section 3, the governor may waive the effect of section 171-13, Hawaii Revised Statutes, to the extent necessary to implement the grant of relief.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval and shall be repealed on July 1, 2005; provided that section 102-2(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved July 10, 2004.)

ACT 202

H.B. NO. 2301

A Bill for an Act Relating to Appellate Jurisdiction.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 11-51, Hawaii Revised Statutes, is amended to read as follows:

“§11-51 Appeal from board ~~[to supreme court]~~. Any affected person, political party, or any of the county clerks, may appeal to the ~~[supreme]~~ intermediate appellate court, subject to chapter 602, in the manner provided for civil appeals ~~[to the supreme court]~~ from the circuit court; provided that the appeal is brought no later than 4:30 p.m. on the tenth day after the board serves its written decision, including findings of fact and conclusions of law, upon the appellant. This written decision of the board shall be a final appealable order. The board shall not consider motions for reconsideration. Service upon the appellant shall be made personally or by registered mail, which shall be deemed complete upon deposit in the mails, postage prepaid, and addressed to the appellant's last known address.”

SECTION 2. Section 11-52, Hawaii Revised Statutes, is amended to read as follows:

“§11-52 Hearing; decision final. When the appeal is perfected, the ~~[supreme]~~ court shall hear the ~~[cause either in term time or in vacation]~~ appeal as soon thereafter as may be reasonable. ~~[The determination by the court of the question shall be final.]”~~

SECTION 3. Section 11-53, Hawaii Revised Statutes, is amended to read as follows:

“§11-53 Decision, notice; action on. Immediately upon rendering a final decision upon any appeal, the ~~[supreme]~~ court shall notify the board of registration from which the appeal was taken; and if the decision reverses the decision of the board, the board shall immediately order the register to be corrected to conform with the decision.”

SECTION 4. Section 11-54, Hawaii Revised Statutes, is amended to read as follows:

“§11-54 Status pending appeal. In case of an appeal from a decision of any board of registration the name of the person shall be placed or remain upon the register pending the decision of the ~~[supreme court]~~ appellate courts concerning the same. If the person so registered votes at any election before ~~[a decision of the court has been made]~~ the appeal is decided and acted upon, the ballot of such voter shall be handled in accordance with section 11-25(c).”

SECTION 5. Section 40-91, Hawaii Revised Statutes, is amended to read as follows:

“§40-91 Appeal from comptroller ~~[to supreme court]~~. In case of any question or difference of opinion arising between the comptroller and any officer of the State regarding the proper appropriation to which any item or amount of expense is charged, or any other matter regarding the construction of this chapter or the authority vested in either of them by this chapter, and in all cases where a claim is disallowed by the comptroller in consequence of the absence of an original warrant voucher, or upon an imperfect warrant voucher or an incorrect certificate, or if any person feels aggrieved by any decision of the comptroller, in the rejection or the surcharge of the returns or refusal to approve or allow any demand presented by the person, any of the persons concerned may appeal from the decision to the ~~[supreme]~~ intermediate appellate court, subject to chapter 602. After such investigation as the ~~[supreme court or the intermediate]~~ appellate court~~[, as the case may be,]~~ considers equitable, it may make such order directing the relief of the appellant in whole or in part as appears to the court to be just and reasonable. If the demand of the officer, bill, claim of any person, or the return of any public accountant is approved, in whole or in part by the court, the court shall so indorse its findings on the same and it shall thereafter be presented to the comptroller, who shall enter it in the proper book in like manner as other demands and indorsement shall be made by the comptroller of its having been so entered before it can be paid.”

SECTION 6. Section 47-46, Hawaii Revised Statutes, is amended to read as follows:

“§47-46 Disputed ownership. If there are two or more claimants claiming adversely, each to the other or others, to be the owner in due course of a bond, coupon, or both, as the case may be, alleged to have been lost, stolen, ~~[or]~~ destroyed, or defaced, the director of finance, in the director’s discretion, may require the claimants, if not within the State, to appoint agents within the State to accept service of process, or otherwise to submit to the jurisdiction of the courts of the State, and may bring suit on behalf of the State in any circuit court against the claimants, by interpleader, for the determination of the claimant or claimants entitled to the payment of the bond, coupon, or both, as the case may be. Jurisdiction is hereby conferred upon the designated circuit court to hear and determine, without a jury, the suits and to determine whether any of the claimants is entitled to the payment, and, if so, which of the claimants is so entitled; provided that no such judicial determination

shall dispense with the condition prescribed by section 47-45 requiring a surety bond before the payment of the claims. The cost of the suit shall be borne by the claimants and the court may decree the payment of such costs by any of the unsuccessful claimants, or the apportionments thereof, as may be deemed just. The decision of the court may be appealed to the [supreme] intermediate appellate court [in the same manner and subject to the same conditions and incidents as appeals in equity-], subject to chapter 602, in the manner provided for civil appeals from the circuit court."

SECTION 7. Section 53-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Hearings and trial upon any issue raised in any action, suit, or proceeding in any court involving the construction, interpretation, or validity of this chapter, or involving the legality or validity of any action taken or proposed to be taken under or pursuant to this chapter, whether by way of injunction, suit for declaratory judgment, submission on agreed statement of facts, or otherwise, shall be given precedence in [both] the [lower] trial courts and [the supreme court, and an interlocutory appeal to the supreme court], on appeal. An appeal to the intermediate appellate court, subject to chapter 602, shall lie from any decision of any [lower] trial court holding valid or invalid any provision of this chapter, or any contract made or proposed, or other action taken or proposed to be taken, under or pursuant to this chapter."

SECTION 8. Section 91-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency pursuant to rule of court, except where a statute provides for a direct appeal to the [supreme court, which appeal shall be] intermediate appellate court, subject to chapter 602[, and in]. In such cases, the appeal shall be treated in [like] the same manner as an appeal from the circuit court to the [supreme court.] intermediate appellate court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal (except in cases appealed under sections 11-51 and 40-91). The court in its discretion may permit other interested persons to intervene."

SECTION 9. Section 101-10, Hawaii Revised Statutes, is amended to read as follows:

"**§101-10 Circuit courts have jurisdiction.** The circuit courts shall try and determine all actions arising under this part, subject only to an appeal [to the supreme court] in accordance with law. The court [may], on its own motion or on motion of any party, may try and determine any issue in the case in advance of other issues."

SECTION 10. Section 101-32, Hawaii Revised Statutes, is amended to read as follows:

"**§101-32 Possession pending appeal.** At any time after judgment has been rendered in the circuit court for or in favor of the plaintiff, or pending an appeal [to the supreme court] by either plaintiff or defendant, the plaintiff, if not already in possession of the land sought to be condemned under an order entered pursuant to sections 101-28 and 101-29, may be put into possession thereof upon the payment, to the clerk of the court, of the amount assessed as compensation or damages and

such further sum as may be required by the court as a fund to pay any further compensation or damages that may be awarded, as well as all damages that may be sustained by the defendant if for any cause the property is not finally taken for public use. Upon such payment, the court shall make an order putting plaintiff into possession of the property sought to be condemned with the right to use the same during the pendency of and until the final conclusion of the litigation. If the plaintiff has appealed ~~[to the supreme court]~~, the amount shall be held by the clerk until the entry of final judgment, and the final judgment shall include, as part of the just compensation and damages awarded, interest at the rate provided in section 101-25 from the date of the order letting plaintiff into possession ~~[as aforesaid]~~. If the defendant who is entitled to the amount of money assessed as compensation or damages and paid into court under this section has appealed ~~[to the supreme court]~~, the defendant shall have the right to demand and receive payment of the same at any time thereafter, upon filing a receipt therefor and an abandonment of all defenses to the action or proceeding, except as to the amount of compensation or damages that the defendant may be entitled to if a new trial shall be granted.”

SECTION 11. Section 101-34, Hawaii Revised Statutes, is amended to read as follows:

“**§101-34 Issue as to use may be set for immediate trial.** If the defendant, in the defendant’s answer[,] or in return to the order to show cause, issued under section 101-28, denies that the use for which the property sought to be condemned is a public use, or a superior public use within the meaning of section 101-7, the issue ~~[may]~~, upon the motion of any party, may be set for immediate trial, without a jury and without regard to position on the calendar. Notwithstanding any provision of section 641-1, an interlocutory appeal shall lie from the decision on the issue as of right, and the appeal shall be given precedence in the ~~[supreme]~~ intermediate appellate court. Failure of the defendant to raise the issue within ten days after service of an order granting immediate possession shall be deemed an admission that the use is a public use or a superior public use, as the case may be.”

SECTION 12. Section 101-52, Hawaii Revised Statutes, is amended to read as follows:

“**§101-52 Proceedings authorized.** Any officer authorized to bring eminent domain proceedings under part I, and any county when thereunto authorized in the manner provided by section 101-13, which is made applicable to this part, may file or cause to be filed a special proceeding for the acquisition by the State or county, as the case may be, of public property required for public uses which are under the officer’s or county’s jurisdiction and control. The circuit courts may try and determine the proceedings without a jury, subject only to an appeal ~~[to the supreme court]~~ in accordance with ~~[law:]~~ chapter 602, in the manner provided for civil appeals from the circuit courts. The circuit court ~~[may]~~, on its own motion or on motion of any party, may try and determine any issue in the case in advance of other issues. Compensation or damages shall be paid by the condemning authority for the condemnation of any public property taken under this chapter.”

SECTION 13. Section 124A-105, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§124A-105]]~~ **Judicial review ~~[by state supreme court]~~.** (a) An accused, who was tried by a special or general court-martial and who still deems the accused’s self aggrieved after the accused has exhausted all of the accused’s rights

of review under this part, shall be entitled to appeal the judgment or sentence of the special or general court-martial, as may have been modified on review under this part prior to judicial review under this section~~[-to the state supreme court]~~, subject to chapter 602, in the manner provided for civil appeals from the circuit courts, and within the time provided by the ~~[Hawaii Rules of Penal Procedure. All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee.]~~ rules of court.

(b) The filing of an appeal pursuant to subsection (a) shall not of itself stay the execution of the judgment or sentence appealed from, but the ~~[supreme court or the intermediate]~~ appellate court may stay the same upon motion upon such conditions as it may deem proper, notwithstanding any conflicting or contrary provision in this chapter relating to the effective date or execution of sentences or any other contrary provision of law.

(c) In reviewing the judgment or sentence of a special or general court-martial, as may have been modified on review prior to judicial review, the ~~[supreme court or the intermediate]~~ appellate court~~[-as the case may be,]~~ may take any of the actions, and exercise any of the powers specified in section 641-16 as the court may deem appropriate in reviewing a judgment or sentence of a military court-martial, and the court shall follow as appropriate or applicable the standards and requirements in section 641-16.

(d) Upon the request of the accused, the state judge advocate shall appoint a lawyer, who is a member of the bar of the highest court of the State and who has been certified under section 124A-45, to represent the accused in the accused's appeal of the court-martial judgment or sentence ~~[to the supreme court]~~. If the accused wishes to be represented by civilian counsel, rather than by appointed military counsel, the accused may do so at the accused's own expense."

SECTION 14. Section 128-24, Hawaii Revised Statutes, is amended to read as follows:

"§128-24 Determination of damages. The governor shall appoint a board of three disinterested appraisers with whom may be filed any claim for damages arising out of any failure to return private property, the temporary use of which was requisitioned, or which was leased, or any claim for damages arising out of the condition in which the private property is returned~~[-];~~ provided that no such claim shall be filed for deterioration of property resulting from ordinary wear and tear, not for any deterioration or damage except such as is shown to have resulted from the taking or use of the property. The claim shall be filed within thirty days after the return of the property or after the governor proclaims that all private property has been returned to the owners, whichever is earlier. The decision of the appraisers shall be final and binding upon both the governor and the claimant, provided that either party may file a petition in the circuit court within sixty days after the rendering of a decision of the board, praying for the decision of the court upon the claim. The petition, if filed by the government, shall be entitled in the name of the State, by the attorney general, and shall be heard and decided by the circuit court without the intervention of a jury. If filed by any other party, the petition shall be filed, heard, and decided in the manner provided for suits against the State. ~~[A further]~~ Appellate review ~~[by the supreme court]~~ may be had ~~[as provided by law in such cases.]~~, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. The court may order the joinder of other parties~~[-]~~ or may allow other parties to intervene. Any award which has become final shall be paid out of any funds available under this chapter, and if not sufficient, out of the general revenues of the State not otherwise appropriated."

SECTION 15. Section 196D-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Where the contested case provisions under chapter 91 apply to any one or more of the permits to be issued by the agency for the purposes of the project, the agency [may], if there is a contested case involving any of the permits, may be required to conduct only one contested case hearing on the permit or permits within its jurisdiction. Any appeal from a decision made by the agency pursuant to a public hearing or hearings required in connection with a permit shall be made directly on the record to the [supreme] intermediate appellate court [for final decision], subject to chapter 602.”

SECTION 16. Section 201G-57, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the corporation pursuant to the provisions of the [~~Hawaii rules of civil procedure,~~] rules of court, except where a statute provides for a direct appeal to the [supreme] intermediate appellate court [~~and in~~]. In such cases, the appeal shall be treated in [~~like~~] the same manner as an appeal from the circuit court [~~to the supreme court~~], including payment of the fee prescribed by section 607-5 for filing the notice of appeal. The court in its discretion may permit other interested persons to intervene.”

SECTION 17. Section 201G-58, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§201G-58**~~]] Appeals.~~ An aggrieved party may secure a review of any final judgment of the circuit court under this subpart by appeal to the [supreme] intermediate appellate court~~[-], subject to chapter 602.~~ The appeal shall be taken in the manner provided in the rules of court.”

SECTION 18. Section 232-1, Hawaii Revised Statutes, is amended to read as follows:

“**§232-1 Appeals by persons under contractual obligations.** Whenever any person is under a contractual obligation to pay a tax assessed against another, the person shall have the same rights of appeal to the board of review [~~and~~], the tax appeal court, and the [supreme] intermediate appellate court, subject to chapter 602, in the person’s own name, as if the tax were assessed against the person. The person against whom the tax is assessed shall also have a right to appear and be heard on any such application or appeal.”

SECTION 19. Section 232-5, Hawaii Revised Statutes, is amended to read as follows:

“**§232-5 Small claims.** The tax appeal court shall establish by rule a small claims procedure that, to the greatest extent practicable, shall be informal. Any protesting taxpayer who would incur a total tax liability, not including penalties and interest, of less than \$1,000, by reason of the protested assessment or payment in question, may elect to employ the procedure upon:

- (1) Payment per taxpayer of a non-refundable filing fee set pursuant to rules adopted by the supreme court, which shall not exceed \$25; and

- (2) Filing with the tax appeal court a written statement of the facts in the case, together with a waiver of the right to further appeal [~~to the supreme court~~].

The tax appeal court shall cause a notice of the appeal and a copy of the statement to be served on the director of taxation.”

SECTION 20. Section 232-19, Hawaii Revised Statutes, is amended to read as follows:

“§232-19 Appeals [~~to supreme court~~]; procedure. Any taxpayer or county aggrieved or the assessor may appeal to the [~~supreme~~] intermediate appellate court, subject to chapter 602, from the decision of the tax appeal court by filing a written notice of appeal with the tax appeal court and depositing therewith the costs of appeal within thirty days after the filing of the decision. The appeal shall be considered and treated for all purposes as a general appeal and shall bring up for determination all questions of fact and all questions of law, including constitutional questions, involved in the appeal. A notice of appeal may be amended at any time up to the final determination of the tax liability by the last court from which an appeal may be taken. The [~~supreme~~] appellate court shall enter a judgment in conformity with its opinion or decision.

All such appeals shall be speedily disposed of and, in the hearing and disposition thereof [~~the same~~], shall be given preference over other litigation in the discretion of the court.”

SECTION 21. Section 232-20, Hawaii Revised Statutes, is amended to read as follows:

“§232-20 Certificate of appeal. Upon the perfection of an appeal [~~to the supreme court~~], the judge of the tax appeal court shall send [~~up~~] to the [~~supreme~~] appellate court a certificate in which there shall be set forth, among other things:

- (1) A brief description of the assessment and the property involved in the appeal, if any, in sufficient detail to identify the same together with the valuation placed on the property by the assessor[-];
- (2) The valuation claimed by the taxpayer or county[-];
- (3) The taxpayer’s or county’s grounds of objection to the assessment[-];
- (4) The valuation, if any, placed thereon by an administrative body established by county ordinance equivalent to a state board of review[-]; and
- (5) The valuation placed thereon by the tax appeal court.

The certificate shall be accompanied by the taxpayer’s return, if any, a copy of the notice of appeal from the assessment and any amendments thereof, the decision, if any, of the state board of review or equivalent county administrative body, a copy of the notice of appeal from the decision of the state board of review or equivalent county administrative body, if any, and any amendments thereof, and a transcript or statement of the evidence before and the decision of the tax appeal court, and all exhibits, motions, orders, or other documents specified by either the taxpayer, the county, or the assessor. [~~Failure~~] No failure of the judge of the tax appeal court to send [~~up~~] or properly prepare the certificate or the accompanying documents shall [~~not~~] prejudice, limit, or in any manner affect the taxpayer’s, county’s, or assessor’s appeal, and the certificate of appeal may be amended at any time up to the final determination of the appeal.”

SECTION 22. Section 232-21, Hawaii Revised Statutes, is amended to read as follows:

“§232-21 [Supreme] Appellate court may admit additional evidence. Upon appeal [~~to the supreme court~~], the appellate court may permit any party to introduce, or [~~may~~], of its own motion, may require the taking of, additional evidence material to the matter in dispute.”

SECTION 23. Section 232-22, Hawaii Revised Statutes, is amended to read as follows:

“§232-22 Costs; deposit for on appeal. No costs shall be charged on appeal to the state board of review.

The non-refundable costs to be deposited in any one case per taxpayer on any appeal to the tax appeal court shall be an amount set pursuant to rules adopted by the supreme court, which shall not exceed \$100.

On appeal to the [~~supreme~~] intermediate appellate court, the deposit for costs, and costs chargeable, shall be the same as in appeals [~~to the supreme court~~] from decisions of circuit courts, as provided by sections 607-5 and 607-6. If the decision of the [~~supreme~~] intermediate appellate court or the supreme court on transfer from or review of the intermediate appellate court is in favor of the taxpayer, the taxpayer shall pay no costs for the appeal, and any payment or deposit therefor shall be returned to the taxpayer. If the decision is only partly in favor of the taxpayer, the costs shall be prorated in the manner provided by section 232-23. No costs shall be payable by, and no deposit shall be required from, the assessor or the county in any case.”

SECTION 24. Section 232-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the event of an appeal by a taxpayer to the tax appeal court, if the appeal or objection is sustained in whole, the costs deposited shall be returned to the appellant. If the appeal or objection is sustained in part only, or if an agreement or compromise is made between the appellant and the tax assessor or other proper officer, whereby a reduction is made in the total amount of the valuation assessed (in cases of real property tax appeals) or the tax assessed (in other cases), then a part of the costs proportionate to the amount for which the appellant obtains a judgment or proportionate to the amount of the reduction, as the case may be, shall be returned to the appellant. In the event of dismissal of the appeal without hearing upon the merits, the costs deposited in the amount set pursuant to rules adopted by the supreme court shall be returned to the appellant.

In the event of a final determination of an appeal by a county to the tax appeal court [~~or~~], the [~~supreme~~] intermediate appellate court, or the supreme court on review, that a higher assessment should be made of the property involved, the additional tax due shall be collected in the same manner as the tax based upon the original assessment.”

SECTION 25. Section 235-114, Hawaii Revised Statutes, is amended to read as follows:

“§235-114 Appeals. Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth. Appeal may be made either to the district board of review or to the tax appeal court; provided that, for appeals other than to the board, the tax so assessed shall have been paid. Either the taxpayer or the assessor may appeal to the tax court from a decision by the board upon which the tax so assessed shall have been paid. If the taxpayer chose not to pay the tax when appealing to the board, and the decision by the board is appealed by the taxpayer or

the decision by the board in favor of the department is not appealed, the taxpayer ~~[must]~~ shall pay the tax so assessed plus interest as provided in section 231-39(b)(4).

If the appeal is first made to the board, the appeal shall either be heard by the board or be transferred to the tax appeal court for hearing at the election of the taxpayer or employer. If heard by the board, an appeal shall lie from the decision thereof to the tax appeal court and to the ~~[supreme]~~ intermediate appellate court, subject to chapter 602, in the manner and with the costs provided by chapter 232. The supreme court shall prescribe forms to be used in the appeals. The forms shall show ~~[the]~~:

- (1) The amount of taxes or liability upon the basis of the taxpayer's computation of the taxpayer's taxable income or the employer's computation of the employer's liability~~[-the]~~;
- (2) The amount upon the basis of the assessor's computation~~[-the]~~;
- (3) The amount upon the basis of the decisions of the board of review and tax appeal court, if any~~[-and the]~~; and
- (4) The amount in dispute.

If or when the appeal is filed with or transferred to the tax appeal court, the court shall proceed to hear and determine the appeal, subject to appeal to the ~~[supreme]~~ intermediate appellate court as is provided in chapter 232.

Any taxpayer or employer appealing from any assessment of income taxes or liability shall lodge with the assessor or assistant assessor a notice of the appeal in writing, stating the ground of the taxpayer's or employer's objection to the additional assessment or any part thereof. The taxpayer or employer ~~[shall]~~ shall file the notice of appeal with the board or the tax appeal court at any time within thirty days subsequent to the date when the notice of assessment was mailed, properly addressed to the taxpayer or employer at the taxpayer's or employer's last known residence or place of business. Except as otherwise provided, the manner of taking the appeal, the costs applicable thereto, and the hearing and disposition thereof, including the distribution of costs and of taxes paid by the taxpayer pending the appeal, shall be as provided in chapter 232.

The tax appeal court may allow an individual taxpayer to file an appeal without payment of the net income tax in cases where the total tax liability does not exceed \$50,000 in the aggregate for all tax years, upon proof that the taxpayer would be irreparably injured by payment of the tax."

SECTION 26. Section 261-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person aggrieved by an order of the director or by the grant, denial, or revocation of any approval, license, or certificate, or refusal of a renewal thereof, may obtain a review thereof by the circuit court of the circuit in which that person resides or does business in the manner provided in chapter 91 for review of orders in contested cases. Upon application of either party, the court may assign the appeal for hearing at the earliest possible date.

~~[Proceedings for review by the supreme court]~~ Appeals may be taken and had in the manner provided for a review of a civil judgment of a circuit court.

Upon the final termination of any judicial review, the director shall enter an order or take other action in accordance with the mandate of the court."

SECTION 27. Section 269-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to any other remedy available, the commission or its enforcement officer may issue citations to any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously ob-

tained under and in compliance with this chapter or the rules ~~[promulgated]~~ adopted thereunder.

- (1) The citation may contain an order of abatement and an assessment of civil penalties as provided in section 269-28(c). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the ~~[supreme]~~ intermediate appellate court, subject to chapter 602, in the manner provided for civil appeals from the circuit court; provided that the operation of an abatement order ~~[will]~~ shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection."

SECTION 28. Section 269-15.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§269-15.5]] Appeals.~~ An appeal from an order of the public utilities commission under this chapter shall lie ~~[to the supreme court]~~, subject to chapter 602, in the manner ~~[and within the time provided by chapter 602 and the rules of court.]~~ provided for civil appeals from the circuit courts. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the order, if the order is final, or if preliminary, is of the nature defined by section 91-14(a). The commission may elect to be a party to all matters from which an order of the

commission is appealed, and the commission may file appropriate responsive briefs or pleadings in the appeal; ~~except~~ provided that where there was no adverse party in the case below, or in cases where there is no adverse party to the appeal, the commission shall be a party to all matters in which an order of the commission is appealed and shall file the appropriate responsive briefs or pleadings in defending all such orders. The appearance of the commission as a party in appellate proceedings in no way limits the participation of persons otherwise qualified to be parties on appeal. The appeal shall not of itself stay the operation of the order appealed from, but the ~~supreme~~ appellate court may stay the order after a hearing upon a motion therefor and may impose conditions it deems proper, including but not limited to requiring a bond, requiring that accounts be kept, or requiring that other measures be taken as ordered to secure restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from is sustained, reversed, or modified in whole or in part.”

SECTION 29. Section 269-54, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The consumer advocate may file with the commission and serve on any public utility a request in writing to furnish any information reasonably relevant to any matter or proceeding before the commission or reasonably required by the consumer advocate to perform the duties hereunder. Any such request shall set forth with reasonable specificity the purpose for which the information is requested and shall designate with reasonable specificity the information desired. The public utility shall comply with such request within the time limit set forth by the consumer advocate unless within ten days following service it requests a hearing on the matter before the public utilities commission and states its reasons therefor. If a hearing is requested, the public utilities commission shall proceed to hold the hearing and make its determination on the request within thirty days after the same is filed. The consumer advocate or the public utility may appeal ~~to the supreme court~~ the decision of the commission on any such request~~[-]~~, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. Subject to the foregoing, such requests may ask the public utility to:

- (1) ~~[furnish]~~ Furnish any information with which the consumer advocate may require concerning the condition, operations, practices, or services of the public utility;
- (2) ~~[produce]~~ Produce and permit the consumer advocate or the consumer advocate’s representative to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any designated tangible thing which is in the possession, custody, or control of the public utility; or
- (3) ~~[permit]~~ Permit entry upon land or other property in the possession or control of the utility for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object thereon.”

SECTION 30. Section 271-27, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) In addition to any other remedy available, the commission or its enforcement officer, including a motor vehicle safety officer employed and assigned by the department of transportation pursuant to section 271-38, may issue citations to persons acting in the capacity of or engaging in the business of a motor carrier within this State, without having a certificate of public convenience and necessity or

other authority previously obtained under and in compliance with this chapter and rules adopted, or to any shipper or consignee located in this State, or any officer, employee, agent, or representative thereof who engages the services of those persons.

- (1) The citation may contain an order of abatement and an assessment of civil penalties as provided in subsection (h). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement, and the amount of civil penalties assessed. If the person cited under this subsection notifies the commission of the request for a hearing in time, the commission shall afford the person an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission, or the commission may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing in time, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the final order, the commission need only produce a certified copy of the final order and show that the notice was given and that a hearing was held or the time granted for requesting the hearing has run without a request.
- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal ~~[to the supreme court;]~~, subject to chapter 602, in the manner provided for civil appeals from the circuit courts; provided that the operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided by law. The commission may adopt any rules under chapter 91 that may be necessary to fully effectuate this subsection."

SECTION 31. Section 271-32, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) An appeal shall lie ~~[to the supreme court]~~, subject to chapter 602, from every order made by the commission ~~[which]~~ that is final, or if preliminary, is of the nature defined by section 91-14(a)(~~;~~), in the manner provided for civil appeals from the circuit court; provided the order is made after reconsideration or rehearing or is the subject of a motion for reconsideration or rehearing, which the commission has denied. An appeal shall lie ~~[to the supreme court]~~, subject to chapter 602, in the manner provided for civil appeals from the circuit courts, only by a person aggrieved in the contested case hearing provided for in this section ~~[in the manner and within the time provided by chapter 602 and by the rules of court]."~~

SECTION 32. Section 271-33, Hawaii Revised Statutes, is amended to read as follows:

“§271-33 Appeals. From the order made on an application for reconsideration or rehearing by the public utilities commission under this chapter, an appeal shall lie ~~[to the supreme court]~~, subject to chapter 602, in the manner and within the time provided ~~[by chapter 602,]~~ for civil appeals from the circuit courts and by the rules of court~~[-]~~; provided that the order is final, or if preliminary, is of the nature defined by section 91-14(a). The appeal ~~[shall not]~~, of itself, shall not stay the operation of the order appealed from, but the court may stay the same after a hearing upon a motion therefor~~[-]~~ and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise to secure a restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from ~~[should be]~~ is sustained, reversed, or modified in whole or in part.”

SECTION 33. Section 271G-19, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In addition to any other remedy available, the commission or its enforcement officer may issue citations to persons acting in the capacity of or engaging in the business of a water carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules ~~[promulgated]~~ adopted thereunder.

- (1) The citation may contain an order of abatement~~[-]~~ and an assessment of civil penalties of not less than \$100, nor more than \$500 for each such offense, and, in the case of a continuing violation, not less than \$200 nor more than \$500 for each day that uncertified activity continues. All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.

- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal ~~[to the supreme court]~~, subject to chapter 602, in the manner provided for civil appeals ~~from the circuit courts~~; provided that the operation of an abatement order ~~[will]~~ shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies, either civil or criminal, provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection.”

SECTION 34. Section 271G-24, Hawaii Revised Statutes, is amended to read as follows:

“§271G-24 Appeals. From an order of the public utilities commission under this chapter, an appeal shall lie ~~[to the supreme court]~~, subject to chapter 602, in the manner ~~[and within the time provided by chapter 602,]~~ provided for civil appeals from the circuit courts and by the rules of court~~;~~; provided ~~that~~ the order is final, or if preliminary, is of the nature defined by section 91-14(a). The appeal ~~[shall not]~~, of itself, shall not stay the operation of the order appealed from, but the court may stay the same after a hearing upon a motion therefor~~;~~ and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise to secure a restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from ~~[should be]~~ is sustained, revised, or modified in whole or in part.”

SECTION 35. Section 281-92, Hawaii Revised Statutes, is amended to read as follows:

“§281-92 Appeals. Any licensee aggrieved by any order assessing~~;~~ or providing for the collection of~~;~~ a penalty, or by any order suspending or revoking any license, may appeal therefrom in the manner provided in chapter 91 to the circuit court of the circuit in which the liquor commission or liquor control adjudication board making the order has jurisdiction and the judgment of the court shall be subject to review ~~[by the supreme court]~~, subject to chapter 602~~;~~, in the manner provided for civil appeals from the circuit courts.”

SECTION 36. Section 286-60, Hawaii Revised Statutes, is amended to read as follows:

“§286-60 Rules of procedure; costs; appeal ~~[to supreme court]~~. The supreme court may prescribe rules of procedure relating to the appeals and hearings before the district courts. An appeal shall lie from the judgment or order of the district court to the ~~[supreme court]~~ intermediate appellate court, subject to chapter 602. The rules shall provide for informal procedure and for minimizing expense and delay to litigants therein. The costs upon such appeal to the district court shall be \$1, which may be waived by the court for good cause shown. No costs shall be chargeable against the county director of finance.”

SECTION 37. Section 377-9, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) Any party may appeal from the judgment of a circuit court entered under this chapter ~~[to the supreme court]~~, subject to chapter 602[-], in the manner provided for civil appeals from the circuit courts.”

SECTION 38. Section 380-10, Hawaii Revised Statutes, is amended to read as follows:

“**§380-10 Appeal.** Whenever any court of the State issues or denies any temporary injunction in a case involving or growing out of a labor dispute, an appeal shall lie as of right ~~[to the supreme court]~~, subject to chapter 602, in the manner provided for civil appeals from the circuit courts, notwithstanding any provision of section 641-1. The appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters of the same character.”

SECTION 39. Section 383-41, Hawaii Revised Statutes, is amended to read as follows:

“**§383-41 Judicial review.** The director of labor and industrial relations or any party to the proceedings before the referee may obtain judicial review of the decision of the referee in the manner provided in chapter 91, by instituting proceedings in the circuit court of the circuit in which the claimant resides or in which the claimant was last employed. In any such court proceedings, every other party to the proceeding before the referee shall be made a party respondent. The director shall be deemed to be a party to any such proceeding. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except proceedings arising under the workers’ compensation law of the State. Proceedings for review by the ~~[supreme]~~ intermediate appellate court may be taken and had in the same manner as is provided for a review of a judgment of a circuit court. No bond shall be required as a condition of initiating a proceeding for judicial review or initiating proceedings for review by the ~~[supreme]~~ intermediate appellate court. Upon the final termination of any judicial proceeding, the referee shall enter an order in accordance with the mandate of the court.”

SECTION 40. Section 383-69, Hawaii Revised Statutes, is amended to read as follows:

“**§383-69 Procedure for rate determination.** The department of labor and industrial relations ~~[shall]~~, as soon as is reasonably possible in each period, shall make its classification of employers for such period and notify each employer of the employer’s rate of contributions for such period as determined pursuant to sections 383-63 to 383-69. The determination shall become conclusive and binding upon the employer unless, within fifteen days after the mailing of notice thereof to the employer’s last known address, or in the absence of mailing within fifteen days after the delivery of the notice to the employer, the employer files an application for review and redetermination, setting forth the employer’s reasons therefor. If the department grants the review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving the employer’s rate of contributions or contribution liability, to contest the chargeability to the employer’s account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to sections 383-31 to 383-43 ~~[except upon the grounds]~~; provided that the services on the basis of which the benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event

that the employer was not a party to the determination, redetermination, or decision, or to any other proceedings under this chapter in which the character of the services was determined. The employer shall be promptly notified of the department's denial of the employer's application, or of the department's redetermination, both of which shall become final unless a proceeding for judicial review in the manner provided in chapter 91 is commenced in the circuit court of the judicial circuit in which the employer resides or has the employer's principal place of business or in the circuit court of the first judicial circuit. The proceedings shall be heard in a summary manner and shall be given precedence over all other civil actions, except for proceedings arising under section 383-41 and the workers' compensation law of the State. An appeal may be taken from the decision of the circuit court to the [supreme] intermediate appellate court[-], subject to chapter 602."

SECTION 41. Section 383-76, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The applicant shall be promptly notified of the action of the department upon any application for adjustment or refund pursuant to subsection (a) of this section. In case any such application is denied in whole or in part, the applicant ~~[may]~~, within thirty days after the date of mailing of notice of the action to the applicant's last known address, or in the absence of such mailing within thirty days after the delivery of the notice to the applicant, may appeal from such denial to the circuit court of the judicial circuit wherein is the principal place of business of the applicant or the circuit court of the first judicial circuit. The department shall be the party respondent to any such judicial proceedings. The procedure in the trial before the circuit court shall be in accordance with the procedure applicable to actions under section 40-35. Proceedings for review by the [supreme] intermediate appellate court may be taken and had, subject to chapter 602, in the same manner, but not inconsistent with this chapter, as is provided in civil actions. In case the final determination in any such judicial proceedings shall be in favor of the employing unit, in whole or in part, any amount determined by such final judgment to have been erroneously paid shall be adjusted or refunded, without interest and without the addition of any other charges, in the same manner as other adjustments or refunds under this chapter."

SECTION 42. Section 386-73, Hawaii Revised Statutes, is amended to read as follows:

"§386-73 Original jurisdiction over controversies. Unless otherwise provided, the director of labor and industrial relations shall have original jurisdiction over all controversies and disputes arising under this chapter. The decisions of the director shall be enforceable by the circuit court as provided in section 386-91. There shall be a right of appeal from the decisions of the director to the appellate board and thence to the [supreme] intermediate appellate court, subject to chapter 602, as provided in sections 386-87 and 386-88, but in no case shall an appeal operate as a supersedeas or stay unless the appellate board or the [supreme] appellate court so orders."

SECTION 43. Section 386-73.5, Hawaii Revised Statutes, is amended to read as follows:

"[§386-73.5] Proceedings to determine employment and coverage. The director of labor and industrial relations shall have original jurisdiction over all controversies and disputes over employment and coverage under this chapter. Except in cases where services are specifically and expressly excluded from "em-

ployment” under section 386-1, it shall be presumed that coverage applies unless the party seeking exclusion is able to establish under both the control test and the relative nature of the work test that coverage is not appropriate under this chapter. There shall be a right of appeal from decisions of the director to the appellate board and thence to the [supreme] intermediate appellate court[-], subject to chapter 602.”

SECTION 44. Section 386-88, Hawaii Revised Statutes, is amended to read as follows:

“§386-88 Judicial review. The decision or order of the appellate board shall be final and conclusive, except as provided in section 386-89, unless within thirty days after mailing of a certified copy of the decision or order, the director or any other party appeals to the [supreme] intermediate appellate court, subject to chapter 602, by filing a written notice of appeal with the appellate board. A fee in the amount prescribed by section 607-5 for filing a notice of appeal from a circuit court shall be paid to the appellate board for filing the notice of appeal from the board, which together with the appellate court costs shall be deemed costs of the appellate court proceeding. The appeal shall be on the record, and the court shall review the appellate board’s decision on matters of law only. No new evidence shall be introduced in the appellate court, except that [the court may,] if evidence is offered [which] that is clearly newly discovered evidence and material to the just decision of the appeal, the court may admit the [same-] evidence.”

SECTION 45. Section 386-93, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If an employer appeals a decision of the director or appellate board, the costs of the proceedings of the appellate board or the [supreme] appellate court ~~[of the State]~~, together with reasonable attorney’s fees, shall be assessed against the employer~~[-]~~ if the employer loses; provided that if an employer or an insurance carrier, other than the employer who appealed, is held liable for compensation, the costs of the proceedings of the appellate board or the [supreme] appellate court ~~[of the State]~~, together with reasonable attorney’s fees, shall be assessed against the party held liable for the compensation.”

SECTION 46. Section 392-21.5, Hawaii Revised Statutes, is amended to read as follows:

“[H]§392-21.5[)] Proceedings to determine employment and coverage. The director of labor and industrial relations shall have original jurisdiction over all controversies and disputes over employment and coverage under this chapter. Except in cases where services are specifically and expressly excluded from “employment” under section 392-5, it shall be presumed that coverage applies unless the party seeking exclusion is able to establish under both the control test and the relative nature of the work test that coverage is not appropriate under this chapter. There shall be a right of appeal from decisions of the director to the circuit court and thence to the [supreme] intermediate appellate court[-], subject to chapter 602.”

SECTION 47. Section 392-75, Hawaii Revised Statutes, is amended to read as follows:

“[H]§392-75[)] Judicial review. Any party or the director may obtain judicial review of the decision of the referee in the manner provided in chapter 91, by instituting proceedings in the circuit court of the circuit in which the claimant resides or in which the claimant was last employed. The proceedings shall be heard

in a summary manner and shall be given precedence over all other civil cases except proceedings arising under the Employment Security Law and the Workers' Compensation Law of the State. Proceedings for review by the [supreme] intermediate appellate court, subject to chapter 602, may be taken and had in the same manner as is provided for a review of a judgment of a circuit court. No bond shall be required as a condition of initiating a proceeding for judicial review or initiating proceedings for review by the [supreme] intermediate appellate court. Upon the final termination of any judicial proceeding, the referee shall enter an order in accordance with the mandate of the court."

SECTION 48. Section 412:2-501, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) An order by the circuit court made pursuant to this section may be appealed to the [supreme] intermediate appellate court, subject to chapter 602, but no stay of the order shall be granted pending such appeal."

SECTION 49. Section 431:14-118, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any final order or decision of the commissioner may be reviewed in the circuit court of the first circuit, and an appeal from the decision of the court shall lie to the [supreme] intermediate appellate court[-], subject to chapter 602. The review shall be taken and had in the manner provided in chapter 91."

SECTION 50. Section 431:14F-113, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any final order or decision of the commissioner may be reviewed in the circuit court of the first circuit, and an appeal from the decision of the court shall lie to the [supreme] intermediate appellate court[-], subject to chapter 602. The review shall be taken and had in the manner provided in chapter 91."

SECTION 51. Section 482-9, Hawaii Revised Statutes, is amended to read as follows:

"§482-9 Appeal. Any person aggrieved by any action of the director under this chapter in issuing or revoking a certificate of registration of a trade name or in denying an application, within thirty days after the action by the director, or if no order has been entered either granting or denying the application within four months after the filing of the application, may commence proceedings to obtain judicial review thereof by the circuit court of the first circuit by filing in the court a notice of appeal. Proceedings for review by the [supreme] intermediate appellate court, subject to chapter 602, may be had and taken in the same manner as is provided for a review of a judgment of a circuit court."

SECTION 52. Section 485-23, Hawaii Revised Statutes, is amended to read as follows:

"§485-23 Appeals to circuit court, first circuit; time; bonds; costs; decree; further appeal. An appeal may be taken by any aggrieved person from any final order of the commissioner of securities to the circuit court of the first circuit in the manner provided in chapter 91. The appellant shall execute a bond in the penal sum of \$1,000 to the State, with sufficient surety, to be approved by the commissioner or the court, conditioned upon the faithful prosecution of the appeal to final judgment, and the payment of all such costs as shall be adjudged against the appellant. The appeal shall be conducted without a jury and confined to the record,

and it may be given precedence by the court over other matters pending in the court. If the order of the commissioner is reversed the court ~~[shall]~~, by its mandate, shall specifically direct the commissioner as to the commissioner's further action in the matter, including the making and entering of any order or orders in connection therewith, and the conditions, limitations, or restrictions to be therein contained; provided that the commissioner shall not thereby be barred from thereafter revoking or altering the order for any proper cause which may thereafter accrue or be discovered. If the order is affirmed, the appellant ~~[shall not be barred]~~, after thirty days, shall not be barred from filing a new application; provided that the application is not otherwise barred or limited. The appeal shall not ~~[in anywise]~~ suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the commissioner or the court. An appeal may be taken from the decree of the circuit court to the ~~[supreme]~~ intermediate appellate court~~[-]~~, subject to chapter 602."

SECTION 53. Section 501-63, Hawaii Revised Statutes, is amended to read as follows:

"§501-63 Appeal ~~[to supreme court]~~. Pursuant to section 641-1(a) and the ~~[Hawaii]~~ rules of ~~[civil procedure,]~~ court, in all cases an appeal to the ~~[supreme]~~ intermediate appellate court shall lie, subject to chapter 602, from the final decree of the land court on behalf of any party aggrieved by the decree. The aggrieved party shall file a notice of appeal and pay the fees for appeal as prescribed by section 501-218, together with the deposit of costs on appeal pursuant to section 607-7, to the registrar of the land court; provided that the registrar of the land court shall thereafter pay the costs on appeal so deposited to the clerk of the supreme court."

SECTION 54. Section 571-54, Hawaii Revised Statutes, is amended to read as follows:

"§571-54 Appeal. An interested party, aggrieved by any order or decree of the court, may appeal to the ~~[supreme]~~ intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court, and review shall be governed by chapter 602, except as hereinafter provided. Where the decree or order affects the custody of a child or minor, the appeal shall be heard at the earliest practicable time. In cases under section 571-11, the record on appeal shall be given a fictitious title, to safeguard against publication of the names of the children or minors involved.

The stay of enforcement of an order or decree, or the pendency of an appeal, shall not suspend the order or decree of the court regarding a child or minor, or discharge the child or minor from the custody of the court or of the person, institution, or agency to whose care the child or minor has been committed, unless otherwise ordered by the family court~~[-]~~ or by the ~~[supreme or intermediate]~~ appellate court after an appeal is taken. Pending final disposition of the case, the family court~~[-]~~ or the ~~[supreme or the intermediate]~~ appellate court, after the appeal is taken, may make such order for temporary custody as is appropriate in the circumstances. If the ~~[supreme or the intermediate]~~ appellate court does not dismiss the proceedings and discharge the child or minor, it shall affirm or modify the order of the family court and remand the child or minor to the jurisdiction of the court for disposition not inconsistent with the ~~[supreme or the intermediate]~~ appellate court's finding on the appeal.

An order or decree entered in a proceeding based upon section 571-11(1), (2), (6), or (9) shall be subject to appeal ~~[to the supreme court]~~ only as follows:

Within twenty days from the date of the entry of any such order or decree, any party directly affected thereby may file a motion for a reconsideration of the facts involved. The motion and any supporting affidavit shall set forth the grounds on which a reconsideration is requested and shall be sworn to by the movant or the movant's representative. The judge shall hold a hearing on the motion, affording to all parties concerned the full right of representation by counsel and presentation of relevant evidence. The findings of the judge upon the hearing of the motion and the judge's determination and disposition of the case thereafter, and any decision, judgment, order, or decree affecting the child and entered as a result of the hearing on the motion, shall be set forth in writing and signed by the judge. Any party ~~[deeming oneself]~~ aggrieved by any such findings, judgment, order, or decree shall have the right to appeal therefrom to the ~~[supreme]~~ intermediate appellate court, upon the same terms and conditions as in other cases in the circuit court, and review shall be governed by chapter 602; provided that no such motion for reconsideration shall operate as a stay of any such findings, judgment, order, or decree unless the judge of the family court so orders; provided further that no informality or technical irregularity in the proceedings prior to the hearing on the motion for reconsideration shall constitute grounds for the reversal of any such findings, judgment, order, or decree by the appellate court."

SECTION 55. Section 602-5, Hawaii Revised Statutes, is amended to read as follows:

"§602-5 Jurisdiction and powers[.]; filing. (a) The supreme court shall have jurisdiction and powers as follows:

- (1) To hear and determine all questions of law, or of mixed law and fact, which are properly brought before it ~~[on any appeal allowed by law from any other court or agency;]~~ by application for a writ of certiorari to the intermediate appellate court or by transfer as provided in this chapter;
- (2) To answer, in its discretion, any question of law reserved by a circuit court, the land court, or the tax appeal court, or any question or proposition of law certified to it by a federal district or appellate court if the supreme court shall so provide by rule;
- ~~[(3)]~~ ~~To entertain, in its discretion, any case submitted without suit when there is a question in difference which might be the subject of a civil action or proceeding in the supreme court, circuit court, or tax appeal court, and the parties agree upon a case containing the facts upon which the controversy depends;~~
- ~~(4)]~~ (3) To exercise original jurisdiction in all questions arising under writs directed to courts of inferior jurisdiction and returnable before the supreme court, or if the supreme court consents to receive the case arising under writs of mandamus directed to public officers to compel them to fulfill the duties of their offices; and such other original jurisdiction as may be expressly conferred by law;
- ~~[(5)]~~ (4) To issue writs of habeas corpus, or orders to show cause as provided by chapter 660, returnable before the supreme court or a circuit court, and any justice may issue writs of habeas corpus or such orders to show cause, returnable as above stated;
- ~~[(6)]~~ (5) To make or issue any order or writ necessary or appropriate in aid of its ~~[appellate or original]~~ jurisdiction, and in such case, any justice may issue a writ or an order to show cause returnable before the supreme court; and

~~[(7)] (6)~~ To make and award such judgments, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it.

~~[(8)] (b)~~ All cases addressed to the jurisdiction of the supreme court or of the intermediate appellate court shall be filed with the clerk of the supreme court as ~~[shall be]~~ provided by ~~[rule]~~ the rules of court. The ~~[chief justice or the chief justice's designee from any of the associate justices or the intermediate appellate judges, shall receive each case and shall assign the case either to the intermediate appellate court or to the supreme court within twenty days of the filing deadline for the last document permissible to be filed in the case pursuant to court rule.]~~ clerk shall maintain the record of each case whether addressed to the jurisdiction of the supreme court or the jurisdiction of the intermediate appellate court.

~~[(9)]~~ The supreme court may order the immediate reassignment of a case to itself after its assignment to the intermediate appellate court whenever the supreme court in its discretion deems that the case concerns an issue of imperative or of fundamental public importance.]”

SECTION 56. Section 602-10, Hawaii Revised Statutes, is amended to read as follows:

“§602-10 Full court; oral argument; substitute justices. Parties to a proceeding before the supreme court shall be entitled to ~~[bring an appeal before]~~ consideration by a full court. Oral argument shall be before a full court; provided that in an appropriate case, the court in its discretion may dispense with oral argument. In case of a vacancy, or if a justice of the supreme court is disqualified from sitting in any case pending before the supreme court, ~~[or]~~ is unable to attend, ~~[or]~~ is absent, ~~[or]~~ is recused, or has been excused, the vacancy or the place of such justice may be temporarily filled by a circuit judge designated by the chief justice or by the appointment of a justice who has retired from the supreme court. Such retired justice chosen to serve as substitute justice shall not be actively engaged in the practice of law. A retired justice, when sitting as substitute justice, shall be compensated at a rate of pay of associate justices of the supreme court. When necessary, the court may consist of five circuit judges~~;~~ so designated, or five retired justices so appointed, or any combination of circuit judges and retired justices. After oral argument of a case, if a vacancy arises or if for any other reason a justice is unable to continue on the case, the case may be decided or disposed of upon the concurrence of any three members of the court without filling the vacancy or the place of such justice.”

SECTION 57. Section 602-57, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§602-57)]~~ Jurisdiction. ~~[The]~~ Notwithstanding any other law to the contrary, the intermediate appellate court shall have ~~[concurrent]~~ jurisdiction ~~[with the supreme court on all matters set out in section 602-5(1) through (7), subject to assignment of cases set out in section 602-5(8).]~~, subject to transfer as provided in section 602-58 or review on application for a writ of certiorari as provided in section 602-59:

- (1) To hear and determine appeals from the district, family, and circuit courts and from any agency when appeals are allowed by law; and
- (2) To entertain, in its discretion, any case submitted without suit when there is a question of law that could be the subject of a civil action or

proceeding in the circuit court, or tax appeal court, and the parties agree upon the facts upon which the controversy depends.”

SECTION 58. Section 602-58, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§602-58] Motion]~~ Application for [certificates of reassignment] transfer to the supreme court. (a) The intermediate appellate court may entertain [a motion] an application at any time before its issuance of a decision~~[.]~~ requesting [reassignment of the case] transfer of an appeal to the supreme court.

(b) The moving party shall state the grounds of ~~[such motion]~~ the application, indicating how the case on appeal involves a question of such imperative or fundamental public importance as to warrant a direct appeal to the supreme court.

(c) The issuance of a certificate for ~~[reassignment]~~ transfer to the supreme court shall be discretionary upon the intermediate appellate court, and acceptance or rejection of such certification shall be discretionary upon the supreme court. Neither the failure to issue such certification by the intermediate appellate court ~~[or]~~ nor the rejection of such certification by the supreme court shall be subject to ~~[appeal.]~~ further review and shall reinstate the appeal to the intermediate appellate court.”

SECTION 59. Section 602-59, Hawaii Revised Statutes, is amended to read as follows:

“~~§602-59 [Appeals from]~~ Review of decision of the intermediate appellate court, certiorari. (a) After issuance of ~~[a decision by]~~ the intermediate appellate ~~[court,] court’s~~ judgment, a party may ~~[appeal such]~~ seek review of the intermediate appellate court’s decision and judgment only by application to the supreme court for a writ of certiorari, the acceptance or rejection of which shall be discretionary upon the supreme court.

(b) The application for writ of certiorari shall tersely state its grounds ~~[which must include (1) grave errors of law or of fact, or (2) obvious inconsistencies in the decision of the intermediate appellate court with that of the supreme court, federal decisions, or its own decision, and the magnitude of such errors or inconsistencies dictating the need for further appeal].~~

(c) An application for writ of certiorari may be filed with the supreme court no later than thirty days after the filing of the decision of the intermediate appellate court~~[; the]~~. Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed. The supreme court shall determine to accept the application within [ten] thirty days [of its filing.] after an objection is or could have been filed. The failure of the supreme court to accept within ~~[ten]~~ thirty days shall constitute a rejection of the application.

(d) Upon the acceptance of the application, the clerk ~~[of the intermediate appellate court]~~ shall forward the complete file of the case to the ~~[clerk of the]~~ supreme court. Supplemental briefs shall be accepted from the parties only upon the request of the supreme court.”

SECTION 60. Section 606-12, Hawaii Revised Statutes, is amended to read as follows:

“~~§606-12 Duties of official court reporters.~~ The duties of each official court reporter shall be to attend sessions of the court and take verbatim notes of all oral proceedings before the court, including the testimony of witnesses, objections of counsel, offers of proof, arguments of counsel, rulings of the court, charge to the jury, verdict of the jury, and any other matter which the court may require the official

court reporter to report. The official court reporter may be called upon at any time during a hearing, by any party to the same, or by the court, to read aloud any portion of the official court reporter's notes ~~[theretofore]~~ taken by the official court reporter. The official court reporter may be referred to at any time by the clerk of the court for the exact language of any orders from the bench. In any hearing of probate of will or administration matter, the judge ~~[may]~~, in the judge's discretion, may order the official court reporter to supply and file, without charge and within a reasonable time, a certified statement of such testimony as relates to the names, ages, and genealogies of heirs. Other appropriate duties for the official court reporters to perform may be prescribed by rule of court.

Each official court reporter shall file the official court reporter's notes ~~[in a suitable filing case provided for that purpose,]~~ with the clerk of the court and~~;~~ when requested by any party to a cause and so directed by the court~~;~~ or by the court of its own motion, ~~[shall,]~~ within a reasonable time thereafter as the court may designate, shall furnish a certified transcript of the official court reporter's notes, or any portion thereof, taken in the cause, upon the payment of the fee fixed in section 606-13. The official court reporter may furnish a transcript of any of the official court reporter's notes, where the same is not intended for the purposes of appeal ~~[to the supreme court]~~, upon the request of any party, without the order of the judge therefore first obtained.

In an ex parte or uncontested case, if there is no official court reporter in attendance, the court may direct the clerk to take notes of the oral evidence adduced, or the judge may personally take notes or may cause the oral evidence to be preserved on tape or by another mechanical device."

SECTION 61. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The fees referred to in subsection (a) are:

- (1) Except for petitions for temporary restraining order under section 604-10.5, the fee for which shall be the same as that provided in section 607-5(b)(19), for the institution of each action or proceeding, to include all charges except as provided by paragraphs (2) to (6) \$100
- (2) Intervention; answer containing one or more cross-claims or counterclaims; third-party complaint, for each such matter \$10
- (3) Demand for jury trial Fee prescribed by section 607-5
- (4) Filing of notice of appeal ~~[to the supreme court]~~, to be paid in addition to the deposit of appellate court costs \$100
- (5) Making of a copy; comparing of copy with original Fees prescribed by section 92-21
- (6) Posting notice; service fees; garnishee fees; mileage charges; or other services actually performed Amounts necessary to cover actual costs or disbursements
- (7) Administrative costs associated with the processing of traffic citations that involve stopping (when prohibited), standing, or parking \$5 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended
- (8) Administrative costs associated with the processing of traffic citations which do not involve stopping, standing, or parking \$20 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended

- (9) Administrative costs associated with the processing of traffic citations issued for violations of a statute or ordinance relating to vehicles or their drivers, or owners, except those as provided by paragraphs (7) and (8) \$15 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended
- (10) Administrative costs associated with the processing of all civil filings except those brought by the State or any of the various counties and political subdivisions of the State, those commenced by a petition for temporary restraining order under section 604-10.5, and those commenced and conducted in the small claims division of the district court \$20."

SECTION 62. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c)

PART II

The fees prescribed by this part apply without exception.

Jury trial:

- (21) Demand for jury trial, including without limitation probate cases, appeals to the circuit court, and cases transferred to the circuit court from the district court, this fee to be paid to the court in which the demand is filed by the party first making the demand \$200
- (22) Remand to district court in cases transferred to circuit court from district court on demand for jury trial, where jury trial is waived and a remand of such cases to district court is allowed \$50

Miscellaneous:

- (23) Filing of notice of appeal [~~to supreme court~~], to be paid in addition to the deposit of [~~supreme court~~] appeal costs \$100
- (24) Search of records by the clerk \$2
- (25) Making of copy; comparing of copy with original; certification or authentication of notaries Fees prescribed by section 92-21
- (26) Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal \$1
- (27) Exemplification, instead of item (26) \$2
- (28) Filing of copy of notice of completion of contract, with affidavit of publication \$3
- (29) Filing of initial paper under section 507-43 by person asserting mechanic's or materialman's lien (this fee to be additional to the fee prescribed by part I for bringing an action under section 507-47) \$15
- (30) Filing of any other paper not in a pending proceeding \$3
- (31) Printing, publishing, or posting notice; service fees; garnishee fees; mileage charges; or other services actually performed Amounts necessary to cover actual costs or disbursements
- (32) For administrative costs associated with the processing of all civil filings except those brought by the State or any of the various counties or political subdivisions of the State \$50."

SECTION 63. Section 607-5.5, Hawaii Revised Statutes, is amended to read as follows:

“[§607-5.5] Intermediate appellate court costs. Upon the institution of any proceeding in the courts of appeal, there shall be paid to the clerk of the supreme court by the person instituting the proceeding, as costs of court, such sum as is specified in section 607-6[;]; provided that the filing fee for any proceeding to be heard by the courts of appeal shall be payable only once upon the initial filing of the proceeding[;], and no additional filing fee or cost deposit shall be required for filing applications for transfer or writs of certiorari.”

SECTION 64. Section 607-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All proceedings in the courts of appeal shall be filed in the office of the clerk of the supreme court. Upon the filing of any appeal[;] or the institution of any original suit, action, or other proceeding in the supreme court[;] or the intermediate appellate court, there shall be paid to the clerk of the supreme court by the person filing such appeal, or instituting the suit, action, or other proceeding, as costs of court, the sum of \$100. For purposes of this section, applications for transfer and applications for writs of certiorari to the intermediate appellate court shall not be deemed other proceedings.”

SECTION 65. Section 607-7, Hawaii Revised Statutes, is amended to read as follows:

“§607-7 Deposit and payment of costs on appeal. All costs required to be paid upon the filing of any appeal shall be deposited with the clerk of the court from which the appeal is taken, which deposit shall be transmitted to the clerk of the supreme court together with the record of the appeal; provided that the filing fee for an appeal ~~[whether to be heard by the supreme court, intermediate appellate court, or both;]~~ shall be payable only once upon the initial filing of the appeal. The deposit shall be made at the time of filing the notice of appeal.

Where the appeal is from a governmental official or body other than a court, the required payment of costs for filing the appeal shall be made to the clerk of the court to which the appeal is taken except as otherwise provided~~[; provided that the filing fee for an appeal, to be heard by the supreme court, the intermediate appellate court, or both, shall be transmitted to the clerk of the supreme court, and further provided that the filing fee shall be payable only once upon the initial filing of the appeal].~~”

SECTION 66. Section 641-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court~~[; to the supreme court or]~~ to the intermediate appellate court, ~~[except as otherwise provided by law and]~~ subject to ~~[the authority of the intermediate appellate court to certify re-assignment of a matter directly to the supreme court and subject to the authority of the supreme court to reassign a matter to itself from the intermediate appellate court.]~~ chapter 602.”

SECTION 67. Section 641-2, Hawaii Revised Statutes, is amended to read as follows:

“[§641-2] Review on and disposition of appeal. In case of appeal ~~[to the supreme court]~~ from a judgment, order, or decree of a circuit or district court[;] or the land court, in a civil matter, the ~~[supreme]~~ appellate court shall have power to review, reverse, affirm, amend, or modify such judgment, order, or decree, in whole

or in part, ~~[and]~~ as to any or all of the parties. It may enter an amended or modified judgment, order, or decree, or may remand the case to the trial court for the entry of the same or for other or further proceedings, as in its opinion the facts and law warrant. Any judgment, order, or decree entered by the ~~[supreme]~~ appellate court may be enforced by it or remitted for enforcement by the trial court.

Every appeal shall be taken on the record, and no new evidence shall be introduced in the supreme court. The ~~[supreme]~~ appellate court may correct any error appearing on the record, but need not consider a point ~~[which]~~ that was not presented in the trial court in an appropriate manner. No judgment, order, or decree shall be reversed, amended, or modified for any error or defect, unless the court is of the opinion that it has injuriously affected the substantial rights of the appellant.”

SECTION 68. Section 641-11, Hawaii Revised Statutes, is amended to read as follows:

“§641-11 From circuit courts. Any party ~~[deeming oneself]~~ aggrieved by the judgment of a circuit court in a criminal matter~~;~~ may appeal to the ~~[supreme]~~ intermediate appellate court, subject to chapter 602, in the manner and within the time provided by the ~~[Hawaii Rules of Appellate Procedure.]~~ rules of court. The sentence of the court in a criminal case shall be the judgment. All appeals~~[-, whether heard by the intermediate appellate court or the supreme court,]~~ shall be filed with the clerk of the supreme court and shall be subject to one filing fee.”

SECTION 69. Section 641-12, Hawaii Revised Statutes, is amended to read as follows:

“§641-12 From district courts. Appeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters. Such appeals may be made to the ~~[supreme]~~ intermediate appellate court, subject to chapter 602, whenever the party appealing shall file notice of the party’s appeal within thirty days, or such other time as may be provided by the rules of the court.

Within a reasonable time after an appeal has been perfected from a decision of a district court to the appellate court in a criminal matter, it shall be incumbent upon the district court to make a return thereof, together with all papers and exhibits filed in such case.

It shall be the duty of the ~~[respective]~~ clerk of the supreme ~~[or the intermediate appellate]~~ court ~~[whichever has heard the appeal,]~~ to transmit within a reasonable time, to the district court from whose decision the appeal was made, a statement showing the disposition of the case.

~~[All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee.]”~~

SECTION 70. Section 641-13, Hawaii Revised Statutes, is amended to read as follows:

“§641-13 By State in criminal cases. An appeal may be taken by and on behalf of the State from the district or circuit courts to the ~~[supreme]~~ intermediate appellate court, subject to chapter 602, in all criminal cases, in the following instances:

- (1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss, any indictment or complaint or any count thereof;
- (2) From an order or judgment, sustaining a special plea in bar, or dismissing the case where the defendant has not been put in jeopardy;

- (3) From an order granting a new trial;
- (4) From an order arresting judgment;
- (5) From a ruling on a question of law adverse to the State where the defendant was convicted and appeals from the judgment;
- (6) From the sentence, on the ground that it is illegal;
- (7) From a pretrial order granting a motion for the suppression of evidence, including a confession or admission, or the return of property, in which case the [intermediate] appellate court ~~[or the supreme court, as the case may be,]~~ shall give priority to such an appeal and the order shall be stayed pending the outcome of the appeal;
- (8) From an order denying a request by the State for protective order for nondisclosure of witness for their personal safety under Rule 16(e)(4) of the Hawaii Rules of Penal Procedure, in which case the [intermediate] appellate court ~~[or the supreme court, as the case may be,]~~ shall give priority to such appeal and the order shall be stayed pending outcome of such appeal; or
- (9) From a judgment of acquittal following a jury verdict of guilty.”

SECTION 71. Section 641-17, Hawaii Revised Statutes, is amended to read as follows:

“§641-17 Interlocutory appeals from circuit courts, criminal matters.

Upon application made within the time provided by the rules of ~~[the supreme] court~~, an appeal in a criminal matter may be allowed to a defendant from the circuit court to the ~~[supreme] intermediate appellate court~~, subject to chapter 602, from a decision denying a motion to dismiss or from other interlocutory orders, decisions, or judgments, whenever the judge in the judge’s discretion may think the same advisable for a more speedy termination of the case. The refusal of the judge to allow an interlocutory appeal to the appellate court shall not be reviewable by any other court.”

SECTION 72. Section 660-28, Hawaii Revised Statutes, is amended to read as follows:

“§660-28 Bail, etc., before judgment. Except as otherwise provided:

- (1) Until judgment is given, the court may remand the party or accept bail for the party’s appearance from day to day[;] or may place the party under special care and custody, as circumstances may require[;]; and
- (2) After judgment is given, an order made by the court under paragraph (1) shall be continued in effect during a stay of enforcement of judgment, unless the trial court, the intermediate appellate court, or the supreme court after taking of the appeal, [shall terminate] terminates the order or [make] makes other provision in the circumstances.”

SECTION 73. Section 664-5, Hawaii Revised Statutes, is amended to read as follows:

“§664-5 No patent on award until boundaries settled. The department of land and natural resources is forbidden to issue any patent in confirmation of an award by name, made by the commissioners to quiet land titles, without the boundaries being defined in such patent, according to the decision of a commissioner of boundaries, or the intermediate appellate court, or the supreme court[;] on appeal.”

SECTION 74. Section 664-8, Hawaii Revised Statutes, is amended to read as follows:

“§664-8 Appeal. Any party [~~deeming oneself~~] aggrieved by the decision of the commissioner of boundaries may appeal therefrom to the [~~supreme~~] intermediate appellate court, subject to chapter 602, within thirty days from the rendition of the decision, and within the period shall pay all costs accrued and shall pay or deposit costs for appeal as provided in sections 607-5, 607-6, and 607-7; provided that any land owner absent from the State and not represented by an authorized agent within the State[;] shall have the right of appeal for one year from the rendition of the decision.”

SECTION 75. Section 664-9, Hawaii Revised Statutes, is amended to read as follows:

“§664-9 Record on; new evidence. Whenever any person appeals, the commissioner of boundaries shall transmit to the clerk of the supreme court a copy of the record and of the commissioner’s decision, together with any exhibits filed and the bond for costs as in other cases. The intermediate appellate court or the supreme court may permit the introduction of new evidence [~~which~~] that could not with due diligence have been obtained before, and [its] the court’s decision shall be final and binding.”

SECTION 76. Section 664-25, Hawaii Revised Statutes, is amended to read as follows:

“§664-25 Appeal. Any party aggrieved by the decree of the court may appeal therefrom to the [~~supreme~~] intermediate appellate court, subject to chapter 602, in the manner and within the time provided [~~by chapter 602 and by the rules of court.~~] for civil appeals from the circuit courts.”

SECTION 77. Section 664-36, Hawaii Revised Statutes, is amended to read as follows:

“§664-36 Appeal. Any party aggrieved by the judgment of the court may appeal therefrom to the [~~supreme~~] intermediate appellate court, subject to chapter 602, in the manner and within the time provided [~~by the rules of court.~~] for civil appeals from the circuit courts.”

SECTION 78. Section 802-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The court shall determine the amount of reasonable compensation to appointed counsel, based on the rate of \$40 an hour for out-of-court services[;] and \$60 an hour for in-court services and with a maximum fee in accordance with the following schedule:

- | | |
|---|---------|
| (1) Any felony case | \$3,000 |
| (2) Misdemeanor case - jury trial | 1,500 |
| (3) Misdemeanor case - jury waived | 750 |
| (4) Appeals to the [supreme court or] <u>intermediate appellate court</u> | 2,500 |
| (5) Petty misdemeanor case | 450 |
| (6) Any other type of administrative or judicial proceeding including cases arising under chapter 571 | 1,500 |

Payment in excess of any maximum provided for under paragraphs (1) to (6) may be made whenever the court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the administrative judge of such court.”

SECTION 79. Section 805-8, Hawaii Revised Statutes, is amended to read as follows:

“§805-8 Notice to county attorney or prosecuting attorney. In all criminal cases had before a district judge where there has been a commitment as provided in section 805-7, an appeal from the judgment, or a demand for a jury trial, the judge [~~shall~~], forthwith, [~~without delay,~~] shall send to the county attorney or to the prosecuting attorney, as the case may be, notice of the fact, stating briefly in the notice the nature of the case and action taken thereon, giving the name of the defendant and the date the records were sent to the circuit court or the clerk of the supreme court.”

SECTION 80. Section 602-6, Hawaii Revised Statutes, is repealed.

SECTION 81. Section 661-9, Hawaii Revised Statutes, is repealed.

SECTION 82. Appeals pending in the supreme court as of the effective date of this Act may be transferred to the intermediate appellate court or retained at the supreme court as the chief justice, in the chief justice’s sole discretion, directs.

SECTION 83. There is established within the judiciary, for administrative purposes, an appellate review task force to review proposed changes to the appellate system of the courts and make recommendations for implementation of proposed changes to the legislature.

(b)¹ The appellate review task force shall be composed of members appointed by the chief justice of the Hawaii supreme court, and shall include but not be limited to representatives knowledgeable about the appellate process from the following agencies or groups:

- (1) The judiciary’s appellate rules committee;
 - (2) The department of the attorney general;
 - (3) The office of the public defender;
 - (4) The department of the prosecuting attorney of the city and county of Honolulu;
 - (5) One or more representatives from the prosecuting attorney’s offices of the counties of Hawaii, Maui, and Kauai;
 - (6) The Hawaii State Bar Association; and
 - (7) One or more representatives from administrative agencies or boards whose decisions are subject to review in the court system.
- (c) The appellate review task force shall review the following matters:
- (1) Whether an en banc review process should be established at the intermediate court of appeals level;
 - (2) Whether certain classes of appeals should be appealed directly to the supreme court;
 - (3) Whether certain questions of law should be entitled to appeal to the supreme court as a matter of right;
 - (3)² Whether the proposed three-tiered system has been implemented in states of comparable size and what are the experiences of those states with such a system;
 - (4) What effect the changes in this Act will have on staffing at each of the affected court levels and the offices of the clerks;

- (5) Whether the number of judges currently sitting on the intermediate court of appeals is sufficient;
- (6) Whether the current system of appellate review of administrative decisions for each agency or board should be changed;
- (7) Whether there should be a provision for selection of intermediate court of appeals panels;
- (8) Whether the changes proposed in this Act will affect rates of appeal, timeliness of decision-making, and caseload management; and
- (9) Any other matters as may be assigned by the legislature or chief justice.

The appellate review task force is further directed to make recommendations relating to the implementation of the proposed court system, amendments to the proposed court system, enabling legislation, rules of procedure, and any matter as directed by the chief justice. The appellate review task force shall submit a report of its findings and recommendations to the legislature not less than twenty days before the convening of the regular session of 2006.

The judicial council shall supervise the appellate review task force, with staffing assistance from the judiciary as assigned by the chief justice or administrative director.

The legislative reference bureau shall provide technical assistance to the appellate review task force with legislative drafting and shall assist in drafting any legislation proposed by the appellate review task force.

The appellate review task force shall cease to exist on June 30, 2006.

SECTION 84. Statutory material to be repealed is bracketed and stricken.³ New statutory material is underscored.

SECTION 85. This Act shall take effect upon its approval; provided that sections 1 through 82 shall take effect on July 1, 2006.

(Approved July 10, 2004.)

Notes

1. No subsection (a).
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

ACT 203

H.B. NO. 2749

A Bill for an Act Relating to State Funds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 103-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid no later than thirty calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services. In the event circumstances prevent the paying agency from complying with this section, the person shall be entitled to interest from the paying agency on the principal amount remaining unpaid at a rate equal to the prime rate for each calendar quarter plus two per cent[, but in no event shall exceed twelve per cent a year], commencing on the thirtieth day following receipt of the statement or satisfactory delivery of the goods or performance of the services, whichever is later, and ending on the date of the

check. As used in this subsection, “prime rate” means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 10, 2004.)

ACT 204

S.B. NO. 2529

A Bill for an Act Relating to Securities for the Protection of Public Funds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 38-3, Hawaii Revised Statutes, is amended to read as follows:

“§38-3 Securities for protection of funds deposited. For the protection of funds deposited by the director under this chapter, the following securities shall be deposited with the director, or with banks in the continental United States, or with financial institutions with trust powers authorized to do business in the State, as the director may select, to be held therein for safekeeping subject to the order of the director, any other provisions of the laws of the State to the contrary notwithstanding:

- (1) Bonds, notes, debentures, or other evidences of indebtedness of the State or of any county of the State, for which the payment of the interest and principal is a direct obligation of the State or the county, as the case may be, in an amount at least equal in their par value to the amount of the deposit with the depository;
- (2) Bonds, notes, debentures, or other evidences of indebtedness of agencies of the State or of agencies of any county of the State, for which the payment of the interest and principal is from the revenues of the issuing agency, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;
- (3) Bonds, notes, debentures, or other evidences of indebtedness of any improvement district or frontage improvement of any county of the State, for which the payment of the interest and principal is from the assessments made for the improvement, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;
- (4) Bonds, notes, bills, or certificates of indebtedness of the United States or of agencies of the United States, for which the payment of the interest and principal is a direct obligation of the United States, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;
- (5) Bonds, notes, federal home loan bank letters of credit, or debentures of agencies of the United States, in an amount at least equal to ninety-five per cent of their market value, but not to exceed their par value, to the amount of the deposit with the depository;
- (6) Warrants or warrant notes of the State in an amount at least equal in their face value to the amount of the deposit with the depository;

- (7) Bonds, notes, debentures, or other evidences of indebtedness of any other state of the United States, for which the payment of the interest and principal is a direct obligation of that state, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository;
- (8) Bonds, notes, debentures, or other evidences of indebtedness of any city or of any county in the continental United States, for which the payment of the interest and principal is a direct obligation of the city or county, as the case may be, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository; [or]
- (9) Certificates of deposit issued through the Certificate of Deposit Account Registry Service in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository; or
- ~~(9)~~ (10) Other assets on the books of the depository that are eligible to secure advances from the Federal Reserve Banks under regulations of the Federal Reserve Board, in an amount at least equal in their market value, but not to exceed their par value, to the amount of the deposit with the depository; provided that not more than fifty per cent of the deposits held by a depository may be secured by assets of this class.

Security shall not be required for that portion of any deposit that is insured under any law of the United States.

Securities deposited under this section may be withdrawn from time to time; provided that the required amount of securities shall at all times be kept on deposit. The director at any time may require additional securities to be deposited under this section.

In the event that the depository shall fail to pay the deposits, or any part thereof, upon presentation of a check or a certificate of deposit, then the director shall forthwith convert the securities deposited under this section into money for and on behalf of the State; provided that no securities shall be sold except at public auction, after giving at least ten days' public notice thereof in the State."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 10, 2004.)

ACT 205

H.B. NO. 2092

A Bill for an Act Relating to Medicine and Surgery.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that existing statutory requirements for a license to practice medicine or surgery in Hawaii, include the completion of a residency program accredited by the Accreditation Council for Graduate Medical Education (ACGME), or, for graduates of foreign medical schools, completion of a residency program accredited by ACGME. However, ACGME only accredits residency programs in the United States and thus, only those who complete an accredited United States residency program may obtain a medical license in Hawaii.

The legislature finds that this denies licensure to many highly qualified foreign medical school graduates who have completed foreign residency programs that are at least equivalent to medical schools and residency programs in the United States.

The legislature further finds that the Royal College of Physicians and Surgeons of Canada (RCPSC) and the College of Family Physicians of Canada (CFPC) are Canadian medical accreditation bodies with standards recognized as equivalent to the ACGME.

The purpose of this Act is to amend the medicine and surgery licensing law to:

- (1) Authorize licensure of persons who have served their residency in programs accredited by RCPSC or CFPC or in programs outside the United States or Canada approved by the Board; and
- (2) Allow licensure without further examination for persons who have completed education and residency requirements and passed the Medical Council of Canada Qualifying Examination.

SECTION 2. Section 453-4, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Before any applicant shall be eligible for licensure, the applicant shall furnish proof satisfactory to the board that:

- (1) The applicant is of demonstrated competence and professional knowledge; and

- (2) [(A)] The applicant is a graduate of [a]:

(A) A medical school or college whose program leading to the M.D. degree is accredited by the Liaison Committee on Medical Education, and has served a residency of at least one year in a program which has been accredited for the training of resident physicians by the Accreditation Council for Graduate Medical Education, or [if outside the United States, in a program which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for accreditation by the Accreditation Council for Graduate Medical Education; or] a residency of at least one year in a program in Canada which has been accredited for the training of resident physicians by the Royal College of Physicians and Surgeons of Canada, or the College of Family Physicians of Canada; or

(B) [The applicant is a graduate of a] A foreign medical school and has had at least two years of residency in a program accredited by the Accreditation Council for Graduate Medical Education, [and] or has had at least two years of residency in a program in Canada that has been accredited for the training of resident physicians by the Royal College of Physicians and Surgeons of Canada, or by the College of Family Physicians of Canada; and:

- (i) Holds the national certificate of the Educational Commission for Foreign Medical Graduates, or its successor[;], or for applicants with residency training in Canada, has passed with scores deemed satisfactory by the board, the Medical Council of Canada Evaluating Examination, or its successor; or

- (ii) Holds the certificate of the Fifth Pathway Program of the American Medical Association;
provided that for a period of two years after June 26, [1990,]
2004, the requirements of subsection (b)(2)(B)(i) and (ii) shall

not apply to any applicant who has had four years of residency in a program accredited by the Accreditation Council for Graduate Medical Education[.] and who has passed, with scores deemed satisfactory by the board, the Special Purpose Examination (SPEX).

(c) Applicants who have passed, with scores deemed satisfactory by the board, the National Board of Medical Examiners examination (NBME), the Federation Licensing Examination (FLEX), [or] the United States Medical Licensing Examination (USMLE), or a combination of these examinations as approved by the board, [~~with scores deemed satisfactory by the board,~~] or the Medical Council of Canada Qualifying Examination (MCCQE), and who meet the requirements of subsection (b) shall be licensed without the necessity of any further examination; provided that with respect to any applicant, the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians who have been associated with an applicant, or chief residents on a service who have been associated with an applicant during the applicant's training or practice, to be used by the board in assessing the applicant's qualifications to practice medicine."

SECTION 3. The Board of Medical Examiners shall periodically review the provisions of section 453-4(b), Hawaii Revised Statutes.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 12, 2004.)

ACT 206

H.B. NO. 2074

A Bill for an Act Relating to Penalties of Health, Environmental, and Cultural Preservation Laws.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 201M-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Subsection (a) shall not apply [~~when~~]:

- (1) [A] When a small business fails to exercise good faith in complying with the statute or rules;
- (2) [A] When a violation involves wilful or criminal conduct; [and]
- (3) [A] When a violation results in serious health[, safety, or environmental impact] and safety impacts;
- (4) To violations of chapters 6E, 180, 180C, 181, 182, 183, 183C, 183D, 186, 187A, 188, 188F, 189, 190, 190D, 195, 195D, 195F, 205, 205A, 340A, 340E, 341, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P;
- (5) To violations of sections 200-9(b) and (c), 200-24(4), 200-37, and 200-38; or
- (6) To violations of administrative rules promulgated pursuant to section 200-4(6); except for rules pertaining to matters listed in section 200-4(6)(A), (B), (C), and (D)."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 12, 2004.)

ACT 207

H.B. NO. 2023

A Bill for an Act Relating to Administrative Appeals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-12, Hawaii Revised Statutes, is amended to read as follows:

“§346-12 [Fair hearing.] Hearing. An applicant or recipient, deeming oneself aggrieved, shall be entitled to appeal to the director ~~[of human services]~~ in the manner prescribed by department ~~[of human services regulations]~~ rules and shall be afforded reasonable notice and opportunity for a ~~[fair]~~ hearing~~[:]~~ at which all of the evidence presented by the parties, to the extent allowed by chapter 91, shall be considered in a fair and impartial manner.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 12, 2004.)

ACT 208

H.B. NO. 2022

A Bill for an Act Relating to General Assistance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 346-71, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person between eighteen and sixty-five years of age with a disability shall be eligible for general assistance to households without minor dependents if the person:

- (1) Is determined to be needy in accordance with standards established by this chapter and the rules adopted under subsection (e);
- (2) Is unable to meet the disability requirements established by the federal Supplemental Security Income Program or its successor agency; and
- (3) Is unable to engage in any substantial gainful employment because of a determined and certified physical ~~[or]~~, mental, or combination of physical and mental disability. Upon application, the department shall

ask the person whether the person has a physical or mental disability, or both. If the person claims to have both a physical and mental disability, the department shall ask the person to choose whether the person's primary disability is physical or mental. Determination and certification of ~~[physical and mental]~~ the disability shall be as follows:

- (A) A determination and certification of physical disability shall ~~[only]~~ be made by a board of licensed physicians designated and paid by the department. Meetings of this board shall not be subject to part I of chapter 92;
- (B) A determination and certification of mental disability shall be made by a board of licensed psychologists or licensed physicians whose specialty is in psychiatry. This board shall ~~[also]~~ be designated and paid by the department. Meetings of this board shall not be subject to part I of chapter 92;
- (C) If a determination and certification is made that the applicant does not have a physical, mental, or combination of a physical and mental disability, prior to a denial of any claim, the department shall provide the applicant with an initial denial notice that gives the applicant at least ten calendar days to provide additional medical evidence. The notice shall refer the applicant to free legal services for assistance and permit the applicant to request extensions of time, if necessary;
- ~~[(C)]~~ (D) If a determination of physical, mental, or combination of a physical and mental disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person's choice[;]. The department shall promptly provide the person with a complete and legible copy of the recommended appropriate treatment;
- ~~[(D)]~~ If a determination of physical disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person's choice[;]
- (E) Any person, to continue to be certified as mentally disabled, ~~[or]~~ physically disabled, or both mentally and physically disabled, shall be reevaluated annually, as provided by this section, and more frequently, as required by the department; and
- (F) Failure to pursue appropriate medical treatment shall result in a loss of eligibility, unless the failure is due to good cause. Good cause shall include but not be limited to:
 - (i) Treatment is unavailable;
 - (ii) Personal emergencies; and
 - (iii) Circumstances ~~[which]~~ that threaten the safety of the patient.

The department shall adopt rules in accordance with chapter 91 to define "good cause", as used in ~~[this]~~ subparagraph ~~[(F)]~~, in order to determine when treatment is unavailable, what constitutes a personal emergency, what circumstances may threaten the safety of a patient, and other factors that may constitute good cause.

As used in this subsection:

"Substantial gainful employment" means at least thirty hours of work per week.

"With a disability" or "having a disability" means a disability that extends for a period of over sixty days.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be required to accept the services as a further condition of eligibility for the receipt of

general assistance to households without minor dependents under this section. An assistance unit shall be determined ineligible for general assistance to households without minor dependents if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment[,] and participate in public work projects, as described in section 346-31, and in public employment projects, as described in section 346-102."

SECTION 2. The department of human services shall report on the progress of this Act to the legislature no later than twenty days prior to the convening of each regular session beginning with the 2005 legislature and ending with the 2007 legislature.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2004.

(Approved July 12, 2004.)

ACT 209

S.B. NO. 2595

A Bill for an Act Relating to Professional Counselors.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds the *Felix v. Cayetano (Felix)* consent decree demands substantial improvement in the children's mental health delivery system in Hawaii. A key component of the decree is the inclusion of basic mental health and case management services. These are areas that require trained and qualified professional mental health counselors. Presently, a lack of qualified mental health professionals costs Hawaii thousands of dollars in transportation costs to Oahu when qualified professional mental health counselors already residing on the neighbor islands could provide services at a lesser cost and with greater community awareness.

There is approximately a thirty per cent savings in reimbursement rates for professional counselors compared to the reimbursement rates for licensed psychologists for comparable counseling services. Regulating professional mental health counselors makes good economic sense for the State and demonstrates a compassionate concern for the mental health needs of Hawaii's residents.

In 1998, Congress passed legislation to include professional mental health counselors in United States Public Health Service Act programs. The federal government now recognizes professional mental health counseling as one of the core-helping professions along with psychiatry, psychology, psychiatric nursing, social work, and marriage and family therapy.

Both public and private universities in Hawaii have established programs to train professional counselors in the areas of mental health and rehabilitation. Because of the lack of regulation of this profession, these institutions are unable to ensure the employment of Hawaii's graduates of these programs once they are trained in the State.

Forty-seven states and the District of Columbia already have provisions for the regulation of professional mental health counselors to protect their consumers.

Regulation of the rehabilitation counseling specialty is provided for in thirty-seven of the forty-seven states and the District of Columbia. Individuals, insurers, employers, and other consumers of counseling services cannot be assured of the credentials of any person professing to be a counselor. Licensure is sorely needed to ensure quality service.

The State of Hawaii, under laws similar to this Act, already licenses social workers and marriage and family therapists. This has increased the availability of qualified mental health professionals available for *Felix* and other mental health programs. However, there continues to be a shortage of licensed professionals to provide services for these and other programs. Therefore, this Act needs to be implemented to provide more qualified service providers, to avoid discrimination, and to give parity to the remaining masters-level mental health professionals. Passage of this Act is essential to increase the availability of qualified service providers who can contribute to the pool of mental health professionals and increase the choice and availability of providers.

The purpose of this Act is to:

- (1) Establish educational and experiential standards for professional mental health counselors; and
- (2) Require licensure for those persons who practice or represent themselves to the public as licensed mental health counselors.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER MENTAL HEALTH COUNSELORS

§ -1 **Definitions.** As used in this chapter, unless the context clearly requires otherwise:

“Accredited educational institution” means a university or college accredited by the Western Association of Schools and Colleges or a comparable regional body.

“Clinical supervision” means supervision applied to all individuals who are gaining the experience required for a license as a mental health counselor. “Clinical supervision” includes but is not limited to:

- (1) Case consultation on the assessment and presenting problem;
- (2) Development and implementation of treatment plans;
- (3) Enhancement of the supervisee’s counseling techniques and treatment evaluation skills; and
- (4) Evaluation of the course of treatment.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Licensed mental health counselor” means a person:

- (1) Who engages in the practice of mental health counseling and uses the title of licensed mental health counselor;
- (2) Who has been issued a license under this chapter; and
- (3) Whose license is in effect and not revoked or suspended.

“Practice of mental health counseling” means the rendering of professional services to individuals, families, or groups for compensation, monetary or otherwise. These professional services include applying the principles, methods, and theories of counseling, human development, learning theory, group and family dynamics, rehabilitation, and the etiology of mental illness and dysfunctional behavior to define goals and develop a treatment plan of action aimed toward the prevention, treatment, and resolution of mental and emotional dysfunction and intra or interper-

sonal disorders to all persons irrespective of diagnosis. "Practice of mental health counseling" includes but is not limited to:

- (1) The assessment, diagnosis, and treatment of, and counseling for, mental and emotional disorders;
- (2) The assessment, diagnosis, and treatment of, and counseling for, substance abuse and conduct disorders defined in the approved diagnostic and statistical manual for mental disorders;
- (3) The application of educational techniques aimed at the prevention of these disorders; and
- (4) The provision of consultative services to individuals, couples, families, groups, organizations, and communities.

§ **-2 Mental health counselors licensing program.** There is established a mental health counselors licensing program within the department to be administered by the director.

§ **-3 Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the powers and duties to:

- (1) Grant permission to a person to use the title of "licensed mental health counselor" or a description indicating one is a licensed mental health counselor in this State pursuant to this chapter and the rules adopted pursuant thereto;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;
- (3) Administer, coordinate, and enforce this chapter;
- (4) Discipline a licensed mental health counselor for any due cause described by this chapter or violation of the rules;
- (5) Refuse to license a person for failure to meet licensing requirements or on grounds sufficient to discipline a licensed mental health counselor; and
- (6) Appoint an advisory committee consisting of licensed mental health counselors and members of the public to assist with the implementation of this chapter and adopted rules; provided that the initial members of the committee who are mental health counselors shall not be required to be licensed pursuant to this chapter.

§ **-4 Fees; disposition.** (a) Application, examination, reexamination, license, renewal, restoration, penalty, and any other fees relating to the administration of this chapter, shall not be refundable and shall be provided in rules adopted by the director pursuant to chapter 91.

(b) Fees assessed shall defray costs incurred by the department to support the operation of the mental health counselor licensing program. Fees collected shall be managed in accordance with section 26-9(1).

§ **-5 Prohibited acts.** Except as specifically provided in this chapter, no person shall engage in the practice of mental health counseling or use the title of "licensed mental health counselor" or "mental health counselor" without a valid license issued under this chapter. Any person who violates this section shall be subject to a fine of not more than \$1,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the fine imposed under this section shall be a civil action.

§ **-6 Exemptions.** (a) This chapter shall not apply to:

- (1) A person doing work within the duties of the person's profession that overlaps with the practice of mental health counseling; provided that no such person shall use a title stating or implying that the person is a "licensed mental health counselor" or "mental health counselor", or describe or refer to the person's services as mental health counseling;
- (2) Any person who is a duly recognized member of the clergy; provided that the person functions only within the person's capacity as a member of the clergy; and provided further that the person does not represent the person to be a "licensed mental health counselor" or "mental health counselor", or describe or refer to the person's services as mental health counseling;
- (3) Any student enrolled in an accredited educational institution in a recognized program of study leading toward attainment of a graduate degree in mental health counseling or other professional field; provided that the student's activities and services are part of a prescribed course of study supervised by the accredited educational institution and the student is identified by an appropriate title, including but not limited to "mental health counseling student" or "trainee", "clinical psychology student" or "trainee", "social work student" or "trainee", "marriage and family counseling student" or "trainee", or any title that clearly indicates training status;
- (4) Any individual who uses the title of "mental health counselor intern" for the purpose of obtaining clinical experience in accordance with section -7(a)(3);
- (5) Any person employed by a federal, state, or county government agency in a counseling position, but only at those times when the employee is carrying out the duties and responsibilities as a counselor in governmental employment; or
- (6) Any person who is obtaining supervised clinical experience for licensure as a psychologist, social worker, marriage and family therapist, or as another licensed professional; provided that the person's title indicates a trainee or intern status; and provided further that the person does not purport to be a "licensed mental health counselor" or "mental health counselor".

(b) Nothing in this chapter shall be construed to prevent qualified members of other licensed professions as defined by any law or rule of the department, including but not limited to social workers, registered nurses, psychologists, marriage and family therapists, or physicians, from providing mental health counseling or advertising that they provide mental health counseling to individuals, couples, or families consistent with the accepted standards of their respective licensed professions; provided that no such persons shall use a title stating or implying that they are licensed mental health counselors unless the persons are licensed pursuant to this chapter.

§ -7 Application for licensure as a mental health counselor. (a) Any person who applies to the department after July 1, 2005, shall be issued a license by the department if the applicant provides satisfactory evidence to the department that the applicant is qualified for licensure pursuant to the requirements of this chapter and meets the following qualifications:

- (1) A master's degree or doctoral degree from an accredited educational institution in counseling or in an allied field related to the practice of mental health counseling that includes or is supplemented by graduate level course work in counseling comprising a minimum of forty-eight semester hours or seventy-two quarter hours in the following course

areas, with a minimum of three semester hours in each course area as indicated below:

- (A) Human growth and development, including but not limited to the study of life span development, strategies to facilitate that development and transitions, theories of learning and personality development, and human behavior to include crisis, disabilities, addictive behavior, and environmental factors;
 - (B) Social and cultural foundations, including but not limited to the study of issues and trends in a multicultural and diverse society, including characteristics of diverse groups that may include but are not limited to age, race, religious or sexual preference, physical disability, ethnicity and culture, gender, socioeconomics, intellectual ability, and individual, family, and group strategies with diverse populations;
 - (C) Counseling theories and applications, including but not limited to counseling and consultation, including both individual and systems perspectives, interviewing, assessment, and counseling skills, as well as applying principles, methods, and theories of counseling, treatment and counseling of mental and emotional disorders, and educational techniques aimed at preventing such disorders with individuals and families;
 - (D) Group theory and practice, including but not limited to principles of group dynamics, group process, group leadership styles, theories and methods of group counseling, and the application of theory to the group processes;
 - (E) Career and lifestyle development, including but not limited to the study of vocational development theories and decisionmaking models, assessment instruments, and techniques, types, sources, and uses of occupational and educational information systems, career development applications, and career counseling processes, techniques, and resources;
 - (F) Appraisal of human behavior, including but not limited to assessment and diagnosis or disorders with an emphasis on DSM-IV categories, and an understanding of these disorders relative to the counseling context;
 - (G) Tests and measurements, including but not limited to theoretical and historical bases for assessment techniques, assessment methods, including analysis of various types of tests in order to select, administer, interpret, and use assessment and evaluation instruments and techniques in counseling;
 - (H) Research and program evaluation, including but not limited to research design and methods, statistical analysis, principles, practices, and application of needs assessment, and program evaluation; and
 - (I) Professional orientation and ethics, including but not limited to the history of the helping profession, professional roles and functions, ethical standards, confidentiality, professional organizations, and the public policy process, including advocacy on behalf of the profession and its clientele;
- (2) At least two academic terms of supervised practicum intern experience for graduate credit of at least three semester hours or five quarter hours per academic term in a counseling setting with three hundred hours of supervised client contact;

- (3) Completion three thousand hours of post-graduate direct counseling work with one hundred hours of face-to-face clinical supervision within a two-year period; and
- (4) Passed the National Counselor Examination for Licensure and Certification.
- (b) An individual who:
 - (1) Holds current, unencumbered certification as a national certified counselor or a national certified rehabilitation counselor prior to the effective date of this chapter;
 - (2) Has passed the National Counselor Examination for Licensure and Certification, National Clinical Mental Health Counselors Examination of the National Board for Certified Counselors, or Commission on Rehabilitation Counselor Certification examination after January 1, 2000, and before July 1, 2005; and
 - (3) Within one year of the effective date of this chapter, applies for licensure and pays the applicable license fee,shall be deemed to have met the requirements of this section.

§ **-8 Reciprocity.** (a) The director may enter into a reciprocity agreement with any state that licenses mental health counselors if the director finds that the state has substantially the same or higher requirements as this chapter.

(b) The agreement shall provide that the director shall license any resident of that state who is currently licensed by that state if the individual has met or exceeded the requirements of this chapter.

§ **-9 Examination.** (a) The department shall conduct a licensing examination of applicants at least once a year at a time and place designated by the department.

(b) The department shall administer the National Counselor Examination for Licensure and Certification in compliance with the standards of the National Board for Certified Counselors.

(c) The examining fee shall be paid by the applicant directly to the National Board for Certified Counselors.

(d) An applicant shall be held to have passed an examination by obtaining a passing score as determined by the director.

§ **-10 Licensure; fees.** A license shall be issued to a person deemed to be qualified under section -7 upon the payment of a license fee to be determined by the department and shall be valid for three years.

§ **-11 Renewal of license; fees.** Licenses shall be renewed, upon the payment of a renewal fee, triennially not earlier than ninety days before June 30, with the first renewal deadline occurring on June 30, 2008. Failure to renew a license shall result in a forfeiture of the license. Licenses that have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license and the person may be required to reapply for licensure as a new applicant. All renewal and restoration fees shall be determined by the department.

§ **-12 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of, licenses.** (a) In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore, and may deny, revoke, suspend, or condition in any manner, any license

for any one or more of the following acts or conditions on the part of a licensee or license applicant:

- (1) Failing to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (3) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, cocaine, or other drugs or derivatives of a similar nature;
- (4) Practicing the licensed profession while impaired by alcohol, drugs, physical disability, or mental instability;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (7) Professional misconduct, incompetence, gross negligence, or manifest incapacity, in the practice of the licensed profession;
- (8) Engaging in conduct or practice contrary to recognized standards of ethics for the licensed profession;
- (9) Violating any condition or limitation upon which a condition or temporary license was issued;
- (10) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;
- (11) Failing to comply with, observe, or adhere to any law in a manner such that the director deems the applicant or holder to be an unfit or improper person to hold a license;
- (12) Having had a license revoked or suspended, or having been the subject of other disciplinary action, by another state or a federal agency for any reason provided by the licensing laws or this section;
- (13) Having been convicted of a crime, whether by nolo contendere or otherwise, directly related to the qualifications, functions, or duties of the licensed profession;
- (14) Failing to report in writing to the director any disciplinary decision issued against the licensee or applicant in another jurisdiction within thirty days of the disciplinary decision;
- (15) Employing, utilizing, or attempting to employ or utilize, at any time, any person not licensed under the licensing laws where licensure is required; or
- (16) Violating this chapter, chapter 436B, or any rule or order of the director.

(b) Any licensee or applicant who violates this section may also be fined not more than \$1,000 per violation.

§ -13 Confidentiality and privileged communications. No person licensed as a mental health counselor, nor any of the person's employees or associates, shall be required to disclose any information that the person may have acquired in rendering mental health counseling services, except in the following circumstances:

- (1) As required by law;
- (2) To prevent a clear and imminent danger to a person or persons;
- (3) In accordance with the terms of a previously written waiver of the privilege where the waiver is executed by the client or by the client's legally recognized representative;

- (4) Where more than one person jointly receives counseling and each person who is legally competent executes a written waiver. In that instance, a mental health counselor may disclose information from any person in accordance with that person's waiver; or
- (5) In the course of a disciplinary action or pursuant to a duly authorized subpoena issued by the department.

§ -14 Mental health counselor prohibited from testifying in alimony and divorce actions. If both parties to a marriage have obtained mental health counseling from a licensed mental health counselor, the counselor shall be prohibited from testifying in an alimony or divorce action concerning information acquired in the course of mental health counseling. This section shall not apply to custody actions whether or not part of a divorce proceeding."

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs. (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed on December 31, [2003-] 2008. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter (mental health counselors) shall be repealed on December 31, 2008."

SECTION 4. The department of commerce and consumer affairs may appoint an administrative assistant and secretary, without regard to chapter 76, Hawaii Revised Statutes, to assist with the activities of the mental health counselors licensing program.

SECTION 5. Upon the issuance of a new license and at each license renewal period, each mental health counselor shall pay an additional fee of \$75, which shall be maintained in a separate account within the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes. At the end of each quarter, the moneys contained in the separate account established pursuant to this section shall be transferred to the general fund until such time that the total transferred amounts equal the amount appropriated in section 6 of this Act. Thereafter, no surcharge shall be assessed, and any funds in excess of the amount appropriated in section 6 of this Act shall be deposited in the compliance resolution fund.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$61,000, or so much thereof as may be necessary for fiscal year 2004-2005, to implement the mental health counselor licensure program.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 7.¹ This Act shall take effect on July 1, 2005; provided that sections -2 and -3 of section 2 of this Act, and section 4 of this Act, shall take effect upon approval; and provided further that section 6 of this Act shall take effect on July 1, 2004.

(Approved July 12, 2004.)

Note

1. No Ramseyer clause.

ACT 210

S.B. NO. 2165

A Bill for an Act Relating to Child Abuse and Protection.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Child Abuse Prevention and Treatment Act (CAPTA, Public Law 93-247) was enacted by Congress in 1974 to create a focal point within the federal government to identify and address the issues of child abuse and neglect, and to support effective methods of prevention and treatment. The Keeping Children and Families Safe Act of 2003 (Public Law 108-36) reauthorized CAPTA to help states improve practices in preventing and treating child abuse and neglect, including a basic grant program for improving state child protective services. Of particular relevance to Hawaii are the newly enacted federal provisions requiring states to enact by law or to operate an administrative program regarding health care of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

The purpose of this Act is to enhance the medical treatment of drug-addicted newborn infants and the appropriate referrals for their families, and to require the department of human services to seek federal grants.

SECTION 2. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§587- Drug-affected infants; treatment; family referral; federal grants. (a) In conformity to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a) as amended by the Keeping Children and Families Safe Act of 2003 (Public Law 108-36), the department of human services shall implement and operate a statewide program relating to child abuse and neglect that includes:

- (1) Policies and procedures, including but not limited to appropriate referrals to child protective service systems and other appropriate services, to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, including a requirement that health care providers involved in the delivery or care of an affected infant notify child protective services of the occurrence of the condition in the infant; provided that the notification shall not be construed to require criminal prosecution for any illegal action;
- (2) Development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms; and
- (3) Triage procedures for the appropriate referral to a community organization or voluntary preventive service for a child who is not at-risk of imminent harm and for the child's family.

(b) The department of human services, under the Keeping Children and Families Safe Act of 2003 and subsequent federal laws, shall:

- (1) Seek available federal grants and prepare and submit a state plan for the purposes thereof;
- (2) Ensure that federal reporting requirements are adhered to; and
- (3) Adopt rules pursuant to chapter 91 necessary to obtain grants.”

SECTION 3. New statutory material is underscored.¹

ACT 211

SECTION 4. This Act shall take effect upon its approval.

(Approved July 12, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 211

H.B. NO. 1980

A Bill for an Act Relating to Family Court.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 571-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as provided in section 571-84.6, the general public shall be excluded and only such persons admitted whose presence is requested by the parent or guardian or as the judge or district family judge finds to have a direct interest in the case, from the standpoint of the best interests of the child involved, or in the work of the court; provided that [the]:

- (1) Upon request by a party, hearings initiated pursuant to chapter 587 may be opened to the public if a judge determines that doing so would be in the best interests of the child;
- (2) Parties involved in hearings initiated pursuant to chapter 587 shall be allowed to be accompanied by an adult advocate to provide support, unless the court finds that the presence of the advocate would not be in the best interests of the child. The advocate need not be a licensed attorney. The State shall not be required to pay, directly or through reimbursement, for any fees, costs, or expenses related to the advocate. No person shall act as an advocate who has an interest in the matter beyond the protection of the child and the healing and rehabilitation of the family; and
- (3) The victim of the alleged violation and all other witnesses who are [less] younger than eighteen years of age[;] shall be entitled to have parents, guardians, or one other adult and may have an attorney present while testifying at or otherwise attending a hearing initiated pursuant to section 571-11(1) or 571-11(2).

Prior to the start of a hearing, the parents, guardian, or legal custodian, and, when appropriate, the child, the child victim, or witness shall be notified of the right to be represented by counsel and the right to remain silent.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 12, 2004.)

ACT 212

S.B. NO. 473

A Bill for an Act Relating to Halfway Houses.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to require public informational meetings as part of the county zoning permit process for halfway houses for persons released from a correctional facility or a mental health treatment facility, or for persons receiving substance abuse or sexual offender treatment.

SECTION 2. Section 46-4, Hawaii Revised Statutes, is amended to read as follows:

“§46-4 County zoning. (a) This section and any ~~[ordinances or rules and regulations]~~ ordinance, rule, or regulation adopted in accordance with ~~[it,]~~ this section shall apply to ~~[those]~~ lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a ~~[long range,]~~ long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district ~~[as shall be deemed best suited]~~ to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land ~~[so as]~~ to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:

- (1) The areas within which agriculture, forestry, industry, trade, and business may be conducted~~[-];~~
- (2) The areas in which residential uses may be regulated or prohibited~~[-];~~
- (3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted~~[-];~~
- (4) The areas in which particular uses may be subjected to special restrictions~~[-];~~
- (5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered~~[-];~~
- (6) The location, height, bulk, number of stories, and size of buildings and other structures~~[-];~~
- (7) The location of roads, schools, and recreation areas~~[-];~~
- (8) Building setback lines and future street lines~~[-];~~
- (9) The density and distribution of population~~[-];~~
- (10) The percentage of a lot ~~[which]~~ that may be occupied, size of yards, courts, and other open spaces~~[-];~~
- (11) Minimum and maximum lot sizes~~[-];~~ and
- (12) Other ~~[such]~~ regulations ~~[as may be deemed by]~~ the boards or city council ~~[as]~~ find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe ~~[such]~~ rules ~~[and]~~, regulations, and administrative procedures and provide ~~[such]~~ personnel ~~[as]~~ it ~~[may deem]~~ finds

necessary ~~[for the enforcement of]~~ to enforce this section and any ordinance enacted in accordance ~~[therewith]~~ with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing~~;~~ pursuant to chapter 91. ~~[Such a]~~ The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.

Nothing in this section shall invalidate any zoning ~~[ordinances]~~ ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in ~~[accord]~~ accordance with a ~~[long range]~~ long-range, comprehensive~~;~~ general plan~~;~~ and to insure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers ~~[now possessed by]~~ of any county to achieve ~~[the]~~ these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d).

Neither this section nor any ordinance enacted ~~[under]~~ pursuant to this section shall prohibit the ~~[continuance of the]~~ continued lawful use of any building or premises for any trade, ~~[industry]~~ industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential ~~[(single family)]~~ (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

(b) Any final order of a zoning agency established under this section may be appealed to the circuit court of the circuit in which the land in question is found. The appeal shall be in ~~[accord]~~ accordance with the Hawaii rules of civil procedure.

(c) Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents and ~~[which]~~ that are licensed by the State as provided for under section 321-15.6, or in an intermediate care facility/mental retardation-community ~~[(ICF/MR-C)]~~ for persons, including ~~[the]~~ mentally ill, ~~[elders]~~ elder, ~~[the handicapped]~~ the disabled, developmentally disabled, or totally disabled persons, who are not related to the home operator or facility staff; provided that those group living facilities meet all applicable county requirements~~;~~ not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements.

(e) No permit shall be issued by a county agency for the operation of a halfway house unless a public informational meeting is first held in the affected community. The State shall provide notification and access to relevant information, as required, under chapter 846E.

(f) For purposes of this section:

~~["Mentally ill person"]~~ means a mentally ill person as defined under section

"Elder" means an elder as defined under section 201G-1.

"Handicapped person" means an individual with a physical handicap as defined under section 515-2.

"Developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333F-2.

"Totally disabled person" means a person totally disabled as defined under section 235-1.

"Intermediate care facility/mental retardation community (ICF/MR-C)" is defined as an identifiable unit providing residence and care for eight or fewer mentally retarded individuals. Its primary purpose is the provision of health, social, and rehabilitation services to the mentally retarded through an individually designed active treatment program for each resident. No person who is predominately confined to bed shall be admitted as a resident of such a facility.]

"Developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333F-1.

"Disabled person" means a person with a disability as defined under section 515-2.

"Elder" means an elder as defined under section 201G-1.

"Halfway house" is defined as a group living facility for people who:

- (1) Have been released or are under supervised release from a correctional facility;
 - (2) Have been released from a mental health treatment facility; or
 - (3) Are receiving substance abuse or sex offender treatment; and
- are housed to participate in programs that help them readjust to living in the community.

"Intermediate care facility/mental retardation-community" is defined as an identifiable unit providing residence and care for eight or fewer mentally retarded individuals. Its primary purpose is the provision of health, social, and rehabilitation services to the mentally retarded through an individually designed active treatment program for each resident. No person who is predominantly confined to bed shall be admitted as a resident of such a facility.

"Mental health treatment facility" means a psychiatric facility or special treatment facility as defined under section 334-1.

"Mentally ill person" means a mentally ill person as defined under section 334-1.

"Totally disabled person" means a "person totally disabled" as defined under section 235-1.

"Treatment program" means a "substance abuse program" or "treatment program", as those terms are defined under section 353G-2."

SECTION 3. The amendments in this Act shall not apply to any permits for a halfway house issued prior to the effective date of this Act.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 12, 2004.)

A Bill for an Act Relating to School Repair and Maintenance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the backlog of repair and maintenance projects in public schools continues to be of concern and that all means of addressing the problem should be explored and supported.

The legislature finds that the Hawaii 3R's program has saved the State money by completing repair and maintenance projects at public schools that would have ordinarily been done exclusively with state funds and resources. Hawaii 3R's generates savings for the State by leveraging state grant funds with federal funds, private donations, and volunteerism or "sweat equity" from various community organizations and businesses.

In less than two and a half years, Hawaii 3R's has saved the State over \$4,000,000. This figure is determined by taking the estimated cost of the repair and maintenance projects completed in Hawaii 3R's projects (\$5,066,000) and subtracting the amount of state grant funds expended (\$1,000,000). This means that, for every state dollar expended, over five dollars worth of work is completed. It is also noteworthy that Hawaii 3R's has statewide reach, with sixty-three grants awarded to fifty-three schools on the islands of Oahu, Maui, Molokai, Kauai, and Hawaii.

Hawaii 3R's has also received approval from the Internal Revenue Service for designation as a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code.

In Act 214, Session Laws of Hawaii 2003, the legislature appropriated from the general revenues of the State of Hawaii the sum of \$148,688 or so much thereof as may be necessary for fiscal year 2003-2004 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Hawaii 3R's. At this time, however, the funds have yet to be released.

The legislature also finds that the public-private partnership between the State and Hawaii 3R's is effective and essential to the success of the program. Specifically, the legislature finds that the 3R's coordinator position provides the program with expertise, support, quick response, and access to state resources and information. The coordinator position also adds visibility and positive coverage to the efforts of the State.

The legislature acknowledges that Hawaii 3R's also has built a partnership with the military's Joint Venture Education Forum. This relationship benefits not only military-impacted or dependent schools but all of Hawaii's public schools through increased military partnerships. Through Joint Venture Education Forum's federal funding, Hawaii 3R's can provide grants to over one hundred military-impacted, dependent, partnered schools.

The legislature understands that it is necessary to maintain the current level of state funding to reach the estimated one hundred fifty public schools that cannot receive grants through Joint Venture Education Forum funding.

The legislature is encouraged by the level of support that the community has given to Hawaii 3R's and, more importantly, the public schools. Skilled and unskilled volunteer labor from the military, civic clubs, churches, teachers, parents, and students, combined with donations from community restaurants and businesses, have made Hawaii 3R's successful. Also, trade unions and associations have been lending invaluable support. Hawaii 3R's, with the assistance of the department of accounting and general services and the community, has created a truly successful public-private partnership.

Finally, the legislature finds that appropriating public funds to Hawaii 3R's serves the public purpose of expediting the repair and maintenance of Hawaii's public schools.

The purpose of this Act is to:

- (1) Codify a coordinator position for the Hawaii 3R's program within the department of education;
- (2) Make conforming amendments to existing statutes; and
- (3) Transfer the fiscal agency of the Hawaii 3R's repair and maintenance fund to the department of education.

SECTION 2. Section 235-110.2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The department of ~~[accounting and general services]~~ education shall maintain records of the names of taxpayers eligible for the credit and the total value of in-kind services contributed for the repair and maintenance of public schools for the taxable year. All contributions shall be verified by the department of ~~[accounting and general services]~~ education. The department of ~~[accounting and general services]~~ education shall total all contributions that the department of education certifies. Upon each determination, the department of ~~[accounting and general services]~~ education shall issue a certificate to the taxpayer certifying:

- (1) The amount of the contribution;
- (2) That the taxpayer is licensed under chapter 444, 460J, or 464; and
- (3) That the taxpayer has obtained a current and valid certificate signed by the director of taxation, showing that the taxpayer does not owe the State any delinquent taxes, penalties, or interest.

The taxpayer shall file the certificate from the department of ~~[accounting and general services]~~ education with the taxpayer's tax return with the department of taxation. When the total amount of certified contributions reaches \$2,500,000, the department of ~~[accounting and general services]~~ education shall immediately discontinue certifying contributions and notify the department of taxation. In no instance shall the total amount of certified contributions exceed \$2,500,000 for each taxable year."

SECTION 3. Section 302A-1502.4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (j) to read:

"(j) All proposals submitted to Hawaii 3R's for moneys shall be approved by the department ~~[of accounting and general services]~~ for consistency in meeting design and materials standards for public schools."

2. By amending subsection (l) to read:

"(l) Chapter 103D shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that Hawaii 3R's shall be held accountable for the use of the funds under a contract with the department ~~[of accounting and general services]~~."

3. By amending subsection (n) to read:

"(n) The fund shall be audited annually by an independent auditor. The results of each annual audit shall be submitted to the department ~~[of accounting and general services]~~ not later than thirty days from the date Hawaii 3R's receives the audit results. In addition, Hawaii 3R's shall retain for a period of three years and permit ~~[the department of accounting and general services]~~ the department ~~[of education]~~, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records and other evidence that is pertinent to the fund."

4. By amending subsection (q) to read:

“(q) The ~~[state comptroller]~~ superintendent shall submit an annual report of the progress of the Hawaii 3R’s school repair and maintenance fund no later than twenty days prior to the convening of each regular session of the legislature.”

SECTION 4. Section 302A-1502.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-1502.6]~~ **Providers of construction or project-related professional services for the repair and maintenance of public schools; volunteer status[.]; coordinator position established.** (a) Pursuant to chapter 90, the department ~~[of accounting and general services]~~ shall accept as volunteers qualified professional providers of construction or project-related professional services who are under contract with ~~[Helping Hands Hawaii in its]~~ Hawaii 3R’s ~~[project]~~. The department ~~[of accounting and general services]~~ shall maintain a list of volunteers so accepted, and shall provide the professional providers with appropriate guidance, supervision, and control to reasonably protect members of the public from injury or damage. Once accepted as a volunteer by the department, ~~[of accounting and general services,]~~ the professional provider shall be entitled to protection from liability for volunteers under chapter 90, unless the injury or damage is caused by or is the result of the professional provider’s wilful and wanton act or omission.

(b) There is established, within the department of education, a coordinator position to coordinate the public and private efforts to repair and maintain public schools; provided that the coordinator shall serve at the pleasure of the superintendent and may be established as a permanent position not subject to chapter 76.”

SECTION 5. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefore to the legislature at its next session thereafter for review by the legislature.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 13, 2004.)

ACT 214

S.B. NO. 2396

A Bill for an Act Relating to the General Excise Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§237- Exemption of certain convention, conference, and trade show fees.** In addition to any other applicable exemption provided under this chapter, there shall be exempted from the measure of taxes imposed by this chapter all of the value or gross income derived by a fraternal benefit, religious, charitable, scientific,

educational, or other nonprofit organization under section 501(c) of the Internal Revenue Code of 1986, as amended, from fees for convention, conference, or trade show exhibit or display spaces; provided that the gross proceeds of sales by a vendor through the use of exhibit or display space at a conference, convention, or trade show shall be subject to the imposition of the general excise tax under section 237-13.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved July 13, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 215

H.B. NO. 2396

A Bill for an Act Relating to Capital Investments.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
STATE PRIVATE INVESTMENT FUND
PART I. GENERAL PROVISIONS**

§ -1 Definitions. As used in this chapter:

“Board” means the board of directors of the corporation.

“Corporation” means the Hawaii strategic development corporation, a public body corporate and politic and an instrumentality and agency of the State, established under chapter 211F.

“Equity capital” means capital invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private business.

“Guarantee” means each guarantee or agreement issued by the corporation as authorized by this chapter.

“Investor group” means any person that is engaged or considered for engagement by the corporation as an investor group pursuant to this chapter.

“Near-equity capital” means capital invested in unsecured, undersecured, subordinated, or convertible loans, or debt securities.

“Person” means any individual, corporation, limited liability company, partnership, or other lawfully organized entity.

“Put option” means a right or privilege to sell an amount of tax credits during a time period ending on the expiration date of the option.

“State” means the State of Hawaii.

“Tax credits” means tax credits issued or transferred pursuant to this chapter and available against liabilities imposed by chapter 235 or 241.

“Taxpayer” means a person subject to a tax imposed by chapter 235 or 241.

§ **-2 Short title.** This chapter shall be known and may be cited as the “State private investment fund.”

§ **-3 Findings and purpose.** A critical shortage of seed and venture capital resources exists in the State and that shortage is impairing the growth of commerce in the State. A need exists to increase the availability of venture equity capital for emerging, expanding, relocating, and restructuring enterprises in the State, and an increase in return-driven, venture capital investments in such enterprises in the State will help to diversify the State’s economic base. Accordingly, this chapter is enacted to:

- (1) Mobilize equity and near-equity capital for investment in a broad variety of venture capital partnerships in diversified industries;
- (2) Retain the private sector culture of focusing on rate of return in the investing process;
- (3) Secure the services of high quality managers in the venture capital industry;
- (4) Enhance the venture capital culture and infrastructure in the State so as to increase venture capital investment and promote venture capital investing within the State; and
- (5) Accomplish the foregoing purposes in a return-driven manner with the goal of minimizing any adverse impact on state tax revenues.

The legislature finds that the creation of a state private investment fund, as provided under this chapter, serves an important public purpose by answering the need to increase venture capital and expand the growth of commerce in the State.

§ **-4 Mission of the corporation.** The mission of the corporation, pursuant to this chapter and in addition to those set forth in chapter 211F, shall be to mobilize equity and near-equity capital for investment in such a manner that will result in a significant potential to diversify and stabilize the economy of the State. Notwithstanding anything to the contrary in chapter 211F or otherwise, the corporation shall carry out the purposes, mission, and provisions of this chapter.

PART II. IMPLEMENTATION

§ **-11 Business plan.** To fulfill its mission as the mobilizer of equity and near-equity capital, the implementation of this chapter by the corporation shall be subject to the supervision of the board. The corporation shall develop an annual business plan for the implementation of this chapter. The business plan shall be submitted to the board for its approval and shall be included in its annual report, which shall be published as provided in section -15.

§ **-12 Tax credits.** (a) The State shall issue tax credits to the corporation that may be transferred or otherwise used to reduce the tax liability of any taxpayer pursuant to chapter 235 or 241. The total amount of tax credits that may be issued, and which may be transferred pursuant to this chapter by the corporation is \$36,000,000. Upon compliance with subsection (b), the credits shall be freely transferable by the corporation to transferees and by transferees to subsequent transferees; however, the tax credits so transferred by the corporation shall not be exercisable before July 1, 2005, nor after July 1, 2030. The corporation shall not transfer tax credits except in conjunction with a legitimate call on a corporation guarantee. The corporation shall immediately notify the president of the senate, the speaker of the house of representatives, and the governor in writing if any tax credit is transferred by the corporation in conjunction with a legitimate call on a corpora-

tion guarantee; provided that the corporation shall not be required to make that notification for transfers to subsequent transferees.

(b) Subject to the annual authorization by the legislature, the corporation may transfer tax credits under this section up to the annual amount allowed under subsection (c). Legislative authorization for the tax credits shall be by a separate legislative act.

(c) The corporation shall determine the amount of individual tax credits to be transferred pursuant to this chapter and may negotiate for the sale of those credits subject only to the limits imposed by this chapter. The corporation shall limit the transfer of tax credits that may be claimed and used to reduce the tax otherwise imposed by chapter 235 or 241 for one fiscal year (including any tax credits that are carried over by a taxpayer from a prior fiscal year and used to reduce taxes otherwise imposed in the current fiscal year, as permitted in subsection (g)) to not more than an aggregate total of \$12,000,000 per fiscal year. The board shall clearly indicate on the face of the certificate or other document transferring the tax credit the principal amount of the tax credit and the taxable year or years for which the credit may be claimed.

(d) The corporation, in conjunction with the department of taxation, shall develop a system for registration of any tax credits issued or transferred pursuant to this chapter and a system of certificates that permits verification that any tax credit claimed upon a tax return is validly issued, properly taken in the year of claim, and that any transfers of the tax credit are made in accordance with this chapter.

(e) The corporation may pay a fee and provide other consideration in connection with the purchase by the corporation of a put option or other agreement pursuant to which a transfer of tax credits authorized by this chapter may be made.

(f) The tax credits issued or transferred pursuant to this chapter, upon election by the taxpayer at time of use, shall be treated as a payment or prepayment in lieu of taxes imposed under chapter 235 or 241. Tax credits used pursuant to this chapter shall be claimed as a payment of tax or estimated tax for the purposes of chapter 235 or 241.

(g) If the tax credits under this section exceed the taxpayer's income tax liability under chapter 235 or 241 for any taxable year, or for any other reason is not claimed by a taxpayer in whole or in part in any taxable year, the excess of the tax credit over liability, or the amount of the unclaimed tax credit, as the case may be, may be carried over and used as a credit against the taxpayer's income tax liability in any subsequent year until exhausted, subject to:

- (1) The deadline for the exercise of tax credits imposed by subsection (a); and
- (2) The monetary limit imposed by subsection (c).

§ -13 Investment of capital. (a) The corporation may solicit investment plans from investor groups for the investment of capital in accordance with this chapter. The corporation shall establish criteria for the selection of persons, firms, corporations, or other entities. The criteria shall include the applicant's level of experience, quality of management, investment philosophy and process, probability of success in fundraising, plan for achieving the purposes of this chapter, and such other investment criteria as may be used in professional portfolio management that the corporation deems appropriate. If the corporation decides to engage one or more investor groups to deploy or generate capital, it shall consider and select one or more investment plans and investor groups that the corporation deems qualified to:

- (1) Generate capital for investment with the most effective and efficient use of the guarantee;
- (2) Invest the capital in private seed and venture capital entities in a manner mobilizing a wide variety of equity and near-equity invest-

ments in ventures promoting the economic development of the State;
and

- (3) Help build a significant, fiscally strong, and permanent resource to serve the objectives expressed in this chapter.

An investor group engaged by the corporation shall have a manager who is experienced in design and implementation, as well as the management of seed and venture capital investment programs and in capital formation. The corporation may remove and replace any investor group that has been engaged and effect the assignment of assets, liabilities, guarantees, and other contracts of this program to a new investor group, subject to such terms and conditions as may be set forth in the terms of engagement.

(b) With legislative approval pursuant to section -14, the corporation may extend one or more guarantees and secure the performance of such guarantees in the form of a put option, as well as other arrangements selected by the corporation. Without limiting the foregoing:

- (1) The corporation may guarantee loans, lines of credit, and other indebtedness and equity investments and may arrange for, pledge, and assign put options, as well as other agreements to purchase tax credits on such terms as the board may approve from time to time, in order to generate funds to deploy in a manner consistent with this chapter;
- (2) The guarantees of loans, lines of credit, and other indebtedness may extend up to the principal amount plus interest over the term of the guarantee at a rate set by board resolution from time to time, a guarantee of a loan, lines of credit, or other indebtedness in a manner consistent with this chapter; and
- (3) Guarantees of equity capital may extend up to the amount of the investment plus a rate of return set by board resolution from time to time in a manner consistent with this chapter.

Guarantees, in whatever form negotiated by the corporation, may be made for any period of time, but no term shall expire prior to January 1, 2006. The corporation may charge a reasonable fee for costs and the fair compensation of risks associated with its guarantee. Proceeds from the sale of any tax credits may be used to satisfy the contractual guarantee obligation of the corporation. The corporation may contract freely to protect the interest of the State.

(c) If the corporation purchases any security pursuant to an agreement with an investor group, the corporation shall acquire the securities and may invest, manage, transfer, or dispose of the securities in accordance with policies for the management of assets adopted by the corporation.

(d) The corporation may make any contract, execute any document, charge reasonable fees for services rendered, perform any act or enter into any financial or other transaction necessary to carry out its mission. The corporation may employ necessary staff as may be required for the proper implementation of this chapter, the management of its assets, or the performance of any function authorized or required by this chapter necessary for the accomplishment of any such function. Staff shall be selected by the corporation based upon outstanding knowledge and leadership in the field for which the person performs services for the board.

(e) In carrying out the mission of the corporation, as authorized in this chapter, neither the corporation nor its officers, board members, or employees shall be considered to be broker-dealers, agents, investment advisors, or investment adviser representatives under chapter 485. The tax credits issued or transferred pursuant to this chapter shall not be considered securities under chapter 485.

(f) Funds raised or arranged by the corporation pursuant to this chapter shall be invested in seed capital and venture capital investments, as such terms are defined

in chapter 211F, which, to the extent consistent with this chapter, shall be governed by applicable provisions of chapter 211F.

(g) The guarantees extended by the fund shall be payable solely from revenues of the fund and shall be secured solely by those revenues and by the pledges and assignments authorized by this chapter. No holders of guarantees issued under this chapter shall have a right to compel any exercise of the taxing power of the State to pay the guarantees and no moneys other than the revenues of the fund shall be applied to payment thereof. Each guarantee issued under this chapter shall recite in substance that the guarantee is not a general obligation of the State and is payable solely from revenues pledged to the payment thereof, and that such guarantee is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto.

§ -14 **Indebtedness; legislative approval.** The corporation shall not incur any indebtedness without legislative approval. Legislative approval for the corporation to incur indebtedness shall be by means of a separate legislative act.

§ -15 **Annual reports; evaluation by the board.** (a) The corporation shall publish a separate annual report, in conjunction with its annual audit, and present the report to the governor, the senate president, and the speaker of the house. The annual report shall review the mission of the board and programs implemented according to the objective measures set forth in the corporation's business plan. The corporation shall distribute this annual report by any means that will make it available to the financial community.

(b) Seven years after the corporation has begun operations under this chapter, the corporation shall review, analyze, and evaluate the extent to which the corporation has achieved its statutory mission. The evaluation shall include, but not be limited to, an examination of quantified results of the corporation's programs and plans.

§ -16 **Capital formation revolving fund.** There is established a revolving fund for the corporation to be designated as the capital formation revolving fund. The following shall be deposited into the capital formation revolving fund, all moneys:

- (1) Appropriated by the legislature;
- (2) Received as repayment of loans;
- (3) Earned on investments;
- (4) Received pursuant to a venture agreement;
- (5) Received as royalties;
- (6) Received as premiums or fees charged by the corporation; or
- (7) Otherwise received by the corporation.

§ -17 **Audit; state auditor.** The books and records of the fund shall be audited every year by the state auditor.

§ -18 **Construction.** Nothing contained in this chapter is or shall be construed as a restriction or limitation upon any powers that the corporation might otherwise have under any other law of the State heretofore or hereafter enacted, and the provisions of this chapter are cumulative to those powers. To the extent consistent with this chapter, in administering, implementing, and carrying out the mission of the corporation pursuant to this chapter, the corporation shall be governed by and have the powers and authorities set forth in chapter 211F. This chapter shall be construed to provide an additional and alternative method for the doing of the

things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws.

§ -19 Adoption of rules, policies, procedures, and regulatory and administrative measures; enforceability of guarantees of corporation unaffected. (a) The corporation may adopt rules, policies, procedures, and regulatory and administrative measures necessary to administer the programs of the corporation or convenient for the organizational and internal management of the corporation's and board's responsibilities.

(b) The level, timing, or degree of success of the corporation in mobilizing or ensuring investment in Hawaii businesses or projects shall not compromise, diminish, invalidate, or affect the enforceability of any guarantee of the corporation."

PART II

SECTION 2. This part improves currently available tax incentives developed for the high technology industry. Primary among these is Act 221, Session Laws of Hawaii 2001. Act 221 still contains essential incentives that continue to encourage the growth and development of high technology businesses and associated industries.

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

"§235-A Comfort letters; authority to assess fees; established. The department may assess and collect a fee for the issuance of any comfort letter of the department. All fees collected under this section shall be deposited into the tax administration special fund established under section 235-B.

§235-B Tax administration special fund; established. There is established a tax administration special fund into which shall be deposited fees collected under sections 235-A, 235-110.9, and 235-110.91. The moneys in the fund shall be expended by the department to offset the costs associated with:

- (1) Issuing comfort letters;
- (2) Issuing certificates under section 235-110.9; and
- (3) Issuing certificates under section 235-110.91."

SECTION 4. Section 211F-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The governing body of the corporation shall be a board of directors consisting of ~~[eleven]~~ twelve members~~[- Eight of the members shall be from the general public and]~~ to be appointed by the governor for staggered terms pursuant to section 26-34~~[-]~~ as follows:

- (1) Three to be appointed directly by the governor;
- (2) Three to be appointed from a list of nominees from the general public submitted by the president of the senate; and
- (3) Three to be appointed from a list of nominees from the general public submitted by the speaker of the house of representatives,

and shall be selected on the basis of their knowledge, skill, and experience in the scientific, business, or financial fields. The director of business, economic development, and tourism, ~~[an appointed]~~ a member from the board of the high technology development corporation~~[-]~~ appointed by the governor, and ~~[an appointed]~~ a member from the board of the natural energy laboratory of Hawaii authority~~[-]~~ appointed by the governor, or their designated representatives, shall serve as ex officio voting

members. Not more than two of the ~~[eight appointed]~~ six members of the board[,] appointed from the lists of nominees submitted by the president of the senate and the speaker of the house of representatives, during their term of office on the board, shall be employees of the State. [Of the members appointed by the governor, one member shall be appointed from a list of nominees provided by the speaker of the house of representatives and one member shall be appointed from a list of nominees provided by the president of the senate.] All appointed members of the board shall continue in office until their respective successors have been appointed.”

SECTION 5. Section 211F-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation shall have all of the powers necessary to carry out its purposes which shall include but not be limited to the power to:

- (1) Adopt rules pursuant to chapter 91 to carry out the purposes of this chapter;
- (2) Adopt an official seal;
- (3) Sue and be sued, in its own name;
- (4) Finance, conduct, or cooperate in financing or conducting technological, business, financial, or other investigations that are related to or likely to lead to business and economic development by making and entering into contracts and other appropriate arrangements, including the provision of loans, start-up and expansion capital, and other forms of assistance;
- (5) Solicit, study, and assist in the preparation of business plans and proposals ~~[of new or established businesses]~~;
- (6) Provide advice and technical and marketing assistance, support, and promotion to enterprises in which investments have been made;
- (7) Coordinate the corporation’s programs with any education and training program;
- (8) Carry out specialized programs designed to encourage the development of new products, businesses, and markets;
- (9) Prepare, publish, and distribute such technical studies, reports, bulletins, and other materials as it deems appropriate, subject only to the maintenance and respect for confidentiality of client proprietary information;
- (10) Organize, conduct, sponsor, or cooperate in and assist in the conduct of conferences, demonstrations, and studies relating to the stimulation and formation of businesses[;] and to fulfilling the objectives and purposes of chapter ;
- (11) Provide and pay for such advisory services and technical, managerial, and marketing assistance, support, and promotion as may be necessary or desirable to carry out the purposes of this chapter;
- (12) Acquire, hold, and sell qualified securities;
- (13) Consent, subject to the provisions of any contract with noteholders or bondholders, whenever the corporation deems it necessary or desirable in the fulfillment of the purposes of this chapter, to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, or any other terms, of any contract or agreement of any kind to which the corporation is a party;
- (14) Accept donations, grants, bequests, and devises of money, property, service, or other things of value that may be received from the United States or any agency thereof, any governmental agency, or any public or private institution, person, firm, or corporation, to be held, used, or applied for any or all of the purposes specified in this chapter. Receipt

- of each donation or grant shall be detailed in the annual report of the corporation. The report shall include the identity of the donor or lender, the nature of the transaction, and any conditions attaching thereto;
- (15) Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the State;
 - (16) Acquire real property, or an interest therein, by purchase or foreclosure, where that acquisition is necessary or appropriate to protect or secure any investment or loan in which the corporation has an interest; sell, transfer, and convey the property to a buyer and if the sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease the property to a tenant;
 - (17) Acquire, own, hold, dispose of, and encumber personal property of any nature, or any interest therein;
 - (18) Enter into agreements or other transactions with any federal, state, or county agency;
 - (19) Make contracts and execute all instruments necessary or convenient for the carrying on of its business;
 - (20) Appear in its own behalf before state, county, or federal agencies;
 - (21) Procure insurance ~~[against any losses in connection with its property in such amounts, and from such insurers,]~~ as may be necessary ~~[or desirable];~~
 - (22) Appoint officers, employees, consultants, agents, and advisors who shall not be subject to chapter 76, and prescribe their duties and fix compensation within the limitations provided by law;
 - (23) Appoint advisory committees as deemed necessary; and
 - (24) Exercise any other powers of a corporation organized under the laws of the State.”

SECTION 6. Section 235-7.3, Hawaii Revised Statutes, is amended by amending subsection (c), to read as follows:

“(c) For the purposes of this section:

“Performing arts products” means:

- (1) Audio files, video files, audiovideo files, computer animation, and other entertainment products perceived by or through the operation of a computer; and
- (2) Commercial television and film products for sale or license, and reuse or residual fee payments from these products.

“Qualified high technology business” means a business that conducts more than fifty per cent of its activities in qualified research.

“Qualified research” means:

- (1) The same as in section 41(d) of the Internal Revenue Code;
- (2) The development and design of computer software [using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license;] for ultimate commercial sale, lease, license or to be otherwise marketed, for economic consideration. With respect to the software’s development and design, the business shall have substantial control and retain substantial rights to the resulting intellectual property;
- (3) Biotechnology;
- (4) Performing arts products;
- (5) Sensor and optic technologies;
- (6) Ocean sciences;

- (7) Astronomy; or
- (8) Nonfossil fuel energy-related technology.”

SECTION 7. Section 235-110.51, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The tax credit allowed under this section shall ~~[be available for taxable years beginning after December 31, 2000, and shall]~~ not be available for taxable years beginning after December 31, ~~[2005.] 2010.~~”

SECTION 8. Section 235-110.9, Hawaii Revised Statutes, is amended to read as follows:

“§235-110.9 High technology business investment tax credit. (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter a high technology business investment tax credit that shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following four years provided the credit is properly claimed. The tax credit shall be as follows:

- (1) In the year the investment was made, thirty-five per cent;
- (2) In the first year following the year in which the investment was made, twenty-five per cent;
- (3) In the second year following the investment, twenty per cent;
- (4) In the third year following the investment, ten per cent; and
- (5) In the fourth year following the investment, ten per cent;

of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit in the year the investment was made, \$700,000; in the first year following the year in which the investment was made, \$500,000; in the second year following the year in which the investment was made, \$400,000; in the third year following the year in which the investment was made, \$200,000; and in the fourth year following the year in which the investment was made, \$200,000.

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purpose of this section, “net income tax liability” means net income tax liability reduced by all other credits allowed under this chapter.

(c) If the tax credit under this section exceeds the taxpayer’s income tax liability for any of the five years that the credit is taken, the excess of the tax credit over liability may be used as a credit against the taxpayer’s income tax liability in subsequent years until exhausted. Every claim, including amended claims, for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

- (d) If at the close of any taxable year in the five year period in subsection (a):
 - (1) The business no longer qualifies as a qualified high technology business;
 - (2) The business or an interest in the business has been sold by the taxpayer investing in the qualified high technology business; or
 - (3) The taxpayer has withdrawn the taxpayer’s investment wholly or partially from the qualified high technology business;

the credit claimed under this section shall be recaptured. The recapture shall be equal to ten per cent of the amount of the total tax credit claimed under this section in the preceding two taxable years. The amount of the credit recaptured shall apply only to the investment in the particular qualified high technology business that meets the requirements of paragraph (1), (2), or (3). The recapture provisions of this subsection

shall not apply to a tax credit claimed for a qualified high technology business that does not fall within the provisions of paragraph (1), (2), or (3). The amount of the recaptured tax credit determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

(e) Every taxpayer, before March 31 of each year in which an investment in a qualified high technology business was made in the previous taxable year, shall submit a written, certified statement to the director of taxation identifying:

- (1) Qualified investments, if any, expended in the previous taxable year; and
- (2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.

(f) The department shall:

- (1) Maintain records of the names and addresses of the taxpayers claiming the credits under this section and the total amount of the qualified investment costs upon which the tax credit is based;
- (2) Verify the nature and amount of the qualifying investments;
- (3) Total all qualifying and cumulative investments that the department certifies; and
- (4) Certify the amount of the tax credit for each taxable year and cumulative amount of the tax credit.

Upon each determination made under this subsection, the department shall issue a certificate to the taxpayer verifying information submitted to the department, including qualifying investment amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department.

The director of taxation may assess and collect a fee to offset the costs of certifying tax credits claims under this section. All fees collected under this section shall be deposited into the tax administration special fund established under section 235-B.

[(e)] (g) As used in this section:

"Investment tax credit allocation ratio" means, with respect to a taxpayer that has made an investment in a qualified high technology business, the ratio of:

- (1) The amount of the credit under this section that is, or is to be, received by or allocated to the taxpayer over the life of the investment, as a result of the investment; to
- (2) The amount of the investment in the qualified high technology business.

"Qualified high technology business" means a business, employing or owning capital or property, or maintaining an office, in this [State] state; provided that:

- (1) More than fifty per cent of its total business activities are qualified research; and provided further that the business conducts more than seventy-five per cent of its qualified research in this [State] state; or
- (2) More than seventy-five per cent of its gross income is derived from qualified research; and provided further that this income is received from:
 - (A) Products sold from, manufactured in, or produced in this [State] state; or
 - (B) Services performed in this [State] state.

"Qualified research" means the same as defined in section 235-7.3.

(h) Common law principles, including the doctrine of economic substance and business purpose, shall apply to any investment. There exists a presumption that

a transaction satisfies the doctrine of economic substance and business purpose to the extent that the special allocation of the high technology business tax credit has an investment tax credit ratio of 1.5 or less of credit for every dollar invested.

Transactions for which an investment tax credit allocation ratio greater than 1.5 but not more than 2.0 of credit for every dollar invested and claimed may be reviewed by the department for applicable doctrines of economic substance and business purpose.

Businesses claiming a tax credit for transactions with investment tax credit allocation ratios greater than 2.0 of credit for every dollar invested shall substantiate economic merit and business purpose consistent with this section.

[(f)] (i) This section shall not apply to taxable years beginning after December 31, [2005.] 2010.'

SECTION 9. Section 235-110.91, Hawaii Revised Statutes, is amended to read as follows:

“§235-110.91 Tax credit for research activities. (a) Section 41 (with respect to the credit for increasing research activities) and section 280C(c) (with respect to certain expenses for which the credit for increasing research activities are allowable) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section; except that references to the base amount shall not apply and credit for all qualified research expenses may be taken without regard to the amount of expenses for previous years. If section 41 of the Internal Revenue Code is repealed or terminated prior to January 1, [2006.] 2011, its provisions shall remain in effect for purposes of the income tax law of the State as modified by this section, as provided for in subsection [(h)] (j).¹

(b) All references to Internal Revenue Code sections within sections 41 and 280C(c) of the Internal Revenue Code shall be operative for purposes of this section.

(c) There shall be allowed to each [taxpayer,] qualified high technology business subject to the tax imposed by this chapter[,] an income tax credit for qualified research activities equal to the credit for research activities provided by section 41 of the Internal Revenue Code and as modified by this section. The credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(d) Every qualified high technology business, before March 31 of each year in which qualified research and development activity was conducted in the previous taxable year, shall submit a written, certified statement to the director of taxation identifying:

- (1) Qualified expenditures, if any, expended in the previous taxable year; and
- (2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.
- (e) The department shall:
 - (1) Maintain records of the names and addresses of the taxpayers claiming the credits under this section and the total amount of the qualified research and development activity costs upon which the tax credit is based;
 - (2) Verify the nature and amount of the qualifying costs or expenditures;
 - (3) Total all qualifying and cumulative costs or expenditures that the department certifies; and
 - (4) Certify the amount of the tax credit for each taxable year and cumulative amount of the tax credit.

Upon each determination made under this subsection, the department shall issue a certificate to the taxpayer verifying information submitted to the department,

including the qualifying costs or expenditure amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department.

The director of taxation may assess and collect a fee to offset the costs of certifying tax credit claims under this section. All fees collected under this section shall be deposited into the tax administration special fund established under section 235-B.

[(d)] (f) As used in this section:

"Basic research" under section 41(e) of the Internal Revenue Code shall not include research conducted outside of the [State.] state.

"Qualified high technology business" means the same as in section 235-110.9.

"Qualified research" under section 41(d)(1) of the Internal Revenue Code shall not include research conducted outside of the [State.] state.

[(e)] (g) If the tax credit for qualified research activities claimed by a taxpayer exceeds the amount of income tax payment due from the taxpayer, the excess of the tax credit over payments due shall be refunded to the taxpayer; provided that no refund on account of the tax credit allowed by this section shall be made for amounts less than \$1.

[(f)] (h) All claims for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to properly claim the credit shall constitute a waiver of the right to claim the credit.

[(g)] (i) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section.

[(h)] (j) This section shall not apply to taxable years beginning after December 31, [2000, but not to taxable years beginning after December 31, 2005.] 2010."

SECTION 10. Act 297, Session Laws of Hawaii 2000, is amended by amending section 10 to read as follows:

"SECTION 10. It is the intention of the legislature in making amendments in this Part to sections 235-7.3, 235-9.5, 235-110.9, and 235-110.91, Hawaii Revised Statutes, that the amendments be [liberally] construed [-, and in this regard, the] in a manner consistent with the intent of this Act. The department of taxation is further given latitude to interpret those amendments in light of current industry standards. The amendments made in this Part to sections 235-7.3, 235-9.5, 235-110.9, and 235-110.91, Hawaii Revised Statutes, shall not be construed to disqualify any taxpayer who has received a favorable written determination from the department of taxation under the original provisions of those sections as enacted by Act 178, Session Laws of Hawaii, 1999."

SECTION 11. Act 221, Session Laws of Hawaii 2001, is amended by amending section 13 to read as follows:

"SECTION 13. It is the intention of the legislature that the amendments in this Act be [liberally] construed[.] in a manner consistent with the intent of this Act. The department of taxation is further given latitude to interpret these amendments in light of industry developments. The legislature does not intend by the amendments in this Act to opine on the interpretation taken by any taxpayer or the department of taxation on any issue arising under prior law."

SECTION 12. Act 178, Session Laws of Hawaii 2003, is amended by:

1. Amending section 66 to read as follows:

“SECTION 66. This Act shall take effect on July 1, 2003[;]; provided that:

- (1) Sections 1, 2, 3, 4, 5, and 6 shall take effect on June 29, 2003;
- (2) Sections 9, 10, 11, 12, 13, 14, 15, and 16 shall take effect on June 30, 2003; and
- (3) [Sections] Section 7 [and 8] shall take effect on July 1, 2004; provided further that any remaining balances in the Hawaii capital loan revolving fund [and the Hawaii strategic development corporation revolving fund] shall lapse to the general fund.”

2. Repealing section 8:

[“SECTION 8. Section 211F-5, Hawaii Revised Statutes, is repealed.”]

PART III

SECTION 13. Any comfort letter or other written communication issued by the department of taxation prior to the effective date of this Act may continue to be relied upon by the taxpayer to whom such comfort letter or other written communication was issued (including the qualified high technology business and its investors) and shall be respected by the department of taxation, notwithstanding any of the amendments contained in this Act, provided that the assumptions and representations contained in such comfort letter or other written communication remain true and accurate in all material respects. The high technology provisions of sections 235-2.4, 235-2.45, 235-7.3, 235-9.5, 235-110.51, 235-110.9, 235-110.91, 235-111.5, and 237-23.5, Hawaii Revised Statutes, in effect at the time of the comfort letter or other written communication shall continue to apply without regard to any amendments to such provisions under this Act with respect to any transactions or investments made or committed prior to the effective date of this Act.

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application or application,¹ and to this end the provisions of this Act are severable.

SECTION 15. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 17. This Act shall take effect on July 1, 2004; provided section 12 shall take effect on June 30, 2004.

(Approved July 13, 2004.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Procurement.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Section 103D-304, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. The contract file shall contain a copy of the summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications. The recommendations of the selection committee shall not be overturned without due cause.”

SECTION 2. Section 103D-702, Hawaii Revised Statutes, is amended to read as follows:

“**§103D-702 Authority to debar or suspend.** (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer, after consultation with the using agency and the attorney general or corporation counsel, may debar a person for cause from consideration for award of all public contracts and from performance on any public contract. The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for a governmental body’s protection and not for the purpose of punishment. An agency shall impose debarment or suspension to protect a governmental body’s interests and only for cause and in accordance with this section. The debarment period shall not exceed three years. The same officer, after consultation with the using agency and the attorney general or corporation counsel, may suspend a person from consideration for award of all public contracts and from performance on any public contract if there is probable cause for debarment. The suspension period shall not exceed three months. The authority to debar or suspend shall be exercised in accordance with the procedures prescribed by rules adopted by the policy board[-] and shall be applied only to causes, convictions, and violations under subsection (b) after the effective date of the rules adopted by the policy board.

(b) The causes for debarment or suspension include the following:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- (2) Conviction under state or federal statutes relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character [which] that is regarded by the chief procurement officer to be so serious as to justify debarment action:

- (A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- (B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (5) Any other cause the chief procurement officer determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in the rules of the policy board; and
- (6) Violation of the ethical standards set forth in chapter 84 and its implementing rules, or the charters and ordinances of the several counties and their implementing rules.

(c) The existence of a cause for debarment does not necessarily require that a contractor be debarred. The seriousness of a contractor's acts or omissions and any remedial measure or mitigating factors shall be considered in making any debarment decision. Before arriving at any debarment decision, the chief procurement officer shall consider factors such as the following:

- (1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity constituting cause for debarment or had adopted those procedures prior to any government investigation of the activity cited as the cause for debarment;
- (2) Whether the contractor brought the activity cited as the cause for debarment to the attention of the appropriate government agency in a timely manner;
- (3) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and made the result of the investigation available to the chief procurement officer;
- (4) Whether the contractor cooperated fully with government agencies during the investigation and any court or administrative action;
- (5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for improper activity, including any investigative or administrative costs incurred by the governmental body, and has made or has agreed to make full restitution;
- (6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity constituting the cause for debarment;
- (7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the governmental body or the chief procurement officer;
- (8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs;
- (9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment; and
- (10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent its recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as those set forth in this subsection shall not necessarily be determinative of a contractor's present responsibility. If a cause for debarment exists, the contractor has

the burden of demonstrating to the satisfaction of the chief procurement officer the contractor's present responsibility and that debarment is not necessary.

~~[(e)]~~ (d) The chief procurement officer shall issue a written decision to debar or suspend. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the debarred or suspended person involved of the person's rights to review as provided in this part.

~~[(d)]~~ (e) A copy of the decision under subsection ~~[(e)]~~ (d) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

~~[(e)]~~ (f) The chief procurement officer shall transmit a copy of the decision to debar or suspend a contractor to the state procurement office, which shall distribute a list to all governmental bodies containing the names of persons or firms debarred or suspended from consideration for award of all public contracts and from performance on any public contract.

~~[(f)]~~ (g) Upon written notification under subsection ~~[(e)]~~ (f), the chief procurement officer shall make a written determination whether to allow the debarred or suspended person or firm to continue performance on any contract awarded prior to the effective date of the debarment or suspension.

~~[(g)]~~ (h) A decision under subsection ~~[(e)]~~ (d) shall be final and conclusive, unless the debarred or suspended person commences an administrative proceeding under section 103D-709.'

PART II

SECTION 3. In 2003, section 103D-310, Hawaii Revised Statutes, entitled "responsibility of offerors," was amended to require state contractors to be incorporated or organized under the laws of the State or registered to do business in the state as a separate branch or division, and to comply with all of the laws governing entities doing business in Hawaii.

While the amendments were made to put all who seek public contracts for goods, services, and construction on equal footing, they have had the unanticipated effect of preventing the State from retaining out-of-state lawyers with expertise the State needs to protect its interests. Law firms and attorneys from outside the state who are not presently registered or interested in registering to do business in Hawaii will not set up and staff a branch office in Hawaii to satisfy the requirements of the State's unemployment insurance, workers compensation, temporary disability, and prepaid health laws. Thus, recently, when legal expertise necessary to protect the interests of the State was not available in the department of the attorney general or from the local private bar, the attorney general was able to contract with an out-of-state attorney with the needed expertise for those legal services only after the chief procurement officer granted the attorney general's request to exempt the contract from the procurement code altogether.

The purpose of this part is to authorize the attorney general to waive the requirements of section 103D-310(c), Hawaii Revised Statutes, to protect the legal interests of the State, officials, or its agencies. This part would ensure that in placing all who are interested in contracting with the State and counties on an equal footing, the State is not deprived of the legal expertise it needs.

SECTION 4. Section 103D-310, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393, and shall:

- (1) Be incorporated or organized under the laws of the State; or
- (2) Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702. The procuring officer shall verify compliance with this subsection for all contracts awarded pursuant to sections 103D-302, 103D-303, 103D-304, 103D-305, and 103D-306; provided that the attorney general may waive the requirements of this subsection for contracts for legal services if the attorney general certifies in writing that comparable legal services are not available in this state.”

PART III

SECTION 5. Because the Hawaii public procurement code, chapter 103D, Hawaii Revised Statutes, offers various source selection methods, the need for an exemption from the code may no longer exist. In addition, section 103D-102(b)(4)(L), Hawaii Revised Statutes, allows a purchasing agency to request an exemption on a case-by-case basis when it has been determined that procurement by competitive means is either not practicable or not advantageous to the State. Requirements for exemptions should be addressed within the provisions of the procurement code and by the procurement policy board. Accordingly, this part repeals statutory exemptions from chapter 103D.

SECTION 6. Section 36-35, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The expenditure of funds for any project with an estimated total cost of less than \$100,000 shall be exempt from [~~chapter 103D and~~] section 464-4; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices~~[-but not subject to chapter 103D. However, where possible, the comptroller is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the comptroller to any other provision of chapter 103D];~~
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three proposals shall be solicited for each project, based on rules adopted by the comptroller;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous proposal;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.

For all projects, the comptroller shall develop a strategy for the efficient and cost-effective use of government and private-sector workforces and consider increased flexibility through public-private partnering, design-build options, cost plus, job order contracts, performance-based contracts, request for proposals, and any other

means to improve communications and accelerate repairs while preserving the quality of the repairs.”

SECTION 7. Section 36-36, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The expenditure of funds made under this Act for any project with an estimated total cost of less than \$100,000 shall be exempt from ~~[chapter 103D and]~~ section 464-4; provided that:

- (1) The comptroller shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, ~~[but not]~~ subject to chapter 103D. ~~[However, where possible, the comptroller is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the comptroller to any other provision of chapter 103D];~~
- (2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project based on rules adopted by the comptroller;
- (3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation;
- (4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and
- (5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.”

SECTION 8. Section 39A-32, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-32 Department powers as to health care facilities.** In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include~~[;]~~ but are not limited to~~[;]~~ the following:

- (1) Notwithstanding and without compliance with section 103-7 ~~[and chapter 103D]~~, but with the approval of the governor, to ~~[enter]~~:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party~~[;]~~; and ~~[to enter]~~
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party~~[;]~~;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part~~[;]~~;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project~~[;]~~;
- (4) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for this project, to ~~[pledge;]~~

- (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; ~~{to pledge}~~
- (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; ~~{and to pledge}~~
- (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such project; or ~~{any}~~
- (D) Any combination of the foregoing~~[-];~~
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor~~[-]; and~~
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party."

SECTION 9. Section 39A-72, Hawaii Revised Statutes, is amended to read as follows:

"§39A-72 Department powers as to manufacturing enterprises. In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include~~[-]~~ but are not limited to~~[-]~~ the following:

- (1) Notwithstanding and without compliance with section 103-7 ~~{and chapter 103D}~~, but with the approval of the governor, to ~~{enter}~~:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party~~[-]~~; and ~~{to enter}~~
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party~~[-]~~;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part~~[-]~~;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project~~[-]~~;
- (4) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for a project, to ~~{pledge}~~:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; ~~{to pledge}~~
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; ~~{and to pledge}~~

- (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such project; or [any]
- (D) Any combination of the foregoing[-];
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[-]; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part."

SECTION 10. Section 39A-112, Hawaii Revised Statutes, is amended to read as follows:

"§39A-112 Department powers as to processing enterprises. In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[-] but are not limited to[-] the following:

- (1) Notwithstanding and without compliance with section 103-7 [~~and chapter 103D~~], but with the approval of the governor, to [enter]:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party[-]; and [to enter]
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party[-];
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part[-];
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project[-];
- (4) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for a project, to [pledge]:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; [to pledge]
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; [and to pledge]
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such project; or [any]
 - (D) Any combination of the foregoing[-];
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[-]; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part."

SECTION 11. Section 39A-152, Hawaii Revised Statutes, is amended to read as follows:

“§39A-152 Department powers as to industrial enterprises. In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[;] but are not limited to[;] the following:

- (1) Notwithstanding and without compliance with section 103-7 [~~and chapter 103D~~], but with the approval of the governor, to ~~[enter]~~:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party[;]; and ~~[to enter]~~
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party[;];
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part[-];
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project[-];
- (4) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for a project, to ~~[pledge]~~:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which such bonds are issued; ~~[to pledge]~~
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; ~~[and to pledge]~~
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such project; or ~~[any]~~
 - (D) Any combination of the foregoing[-];
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[-]; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 12. Section 39A-192, Hawaii Revised Statutes, is amended to read as follows:

“§39A-192 Department powers as to energy projects. In addition to powers which it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[;] but are not limited to[;] the following:

- (1) Notwithstanding and without compliance with section 103-7 [~~and chapter 103D~~], but with the approval of the governor, to ~~[enter]~~:

- (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party~~[-]; and [to enter]~~
- (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for an energy project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of an energy project;
- (4) As security for the payment of the principal of and interest on the special purpose revenue bonds issued for an energy project, to ~~[pledge];~~
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the energy project for which such bonds are issued; ~~[to pledge]~~
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to such project or such special purpose revenue bonds; ~~[and to pledge]~~
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to such energy project; or ~~[any]~~
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for such extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances an energy project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire an energy project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 13. Section 41D-2, Hawaii Revised Statutes, is amended to read as follows:

“§41D-2 Responsibilities of the comptroller. (a) The comptroller, through the risk manager, shall:

- (1) Have discretion to purchase casualty insurance for the State or state agencies, including those employees of the State who, in the comptroller’s discretion, may be at risk and shall be responsible for the acquisition of all casualty insurance;
- (2) Have discretion to purchase property insurance for the State or state agencies and shall acquire all property insurance;
- (3) Direct and manage all risk management and insurance programs of the State, except for employee benefits insurance and workers’ compensation insurance programs or as otherwise provided in chapters 87, 88, 383 to 386A, 392, and 393;

- (4) Consult with state agencies to determine what property, casualty, and other insurance policies are presently in force or are sought by the state agencies and to make determinations about whether to continue subscribing to insurance policies. In the event that the risk manager's determination is not satisfactory to the state agency, the state agency may have the risk manager's decision reviewed by the comptroller. In this case, the comptroller's decision shall be final;
- (5) Consolidate and combine state insurance coverages, and purchase excess insurance when, in the comptroller's discretion, it is appropriate to do so;
- (6) Acquire risk management, investigative, claims adjustment, actuarial, and other services, except attorney's services, as may be required for the sound administration of this chapter;
- (7) Gather from all state agencies and maintain data regarding the State's risks and casualty, property, and fidelity losses;
- (8) In conjunction with the attorney general and as otherwise provided by this chapter, compromise or settle claims cognizable under chapter 662;
- (9) Provide technical services in risk management and insurance to state agencies;
- (10) Be authorized to establish a captive insurance company pursuant to article 19 of chapter 431 to effectuate the purposes of this chapter; and
- (11) Do all other things appropriate to the development of sound risk management practices and policies for the State.

~~[(b) The requirements of chapter 103D shall not apply to the acquisition of insurance by or for state agencies.]~~

~~[(e)]~~ (b) Any provision in this section to the contrary notwithstanding, the University of Hawaii (as to casualty insurance risks only), the Research Corporation of the University of Hawaii (as to casualty insurance risks only), and the public health facilities of the department of health (with respect to medical malpractice risks only) shall be exempt from the requirements of this chapter."

SECTION 14. Section 87A-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) ~~[Without regard to chapter 103D, the]~~ The board may contract with a carrier to provide fully insured benefits or with a third-party administrator to administer self-insured benefits."

SECTION 15. Section 87A-24, Hawaii Revised Statutes, is amended to read as follows:

~~[[§87A-24]]~~ **Other powers.** In addition to the power to administer the fund, the board may:

- (1) Collect, receive, deposit, and withdraw money on behalf of the fund;
- (2) Invest moneys in the same manner specified in section 88-119(1)(A), (1)(B), (1)(C), (2), (3), (4), (5), (6), and (7);
- (3) Hold, purchase, sell, assign, transfer, or dispose of any securities or other investments of the fund, as well as the proceeds of those investments and any money belonging to the fund;
- (4) Appoint, and at pleasure dismiss, an administrator and other fund staff. The administrator and staff shall be exempt from ~~[[chapter 76]]~~ and shall serve under and at the pleasure of the board;
- (5) Make payments of periodic charges and pay for reasonable expenses incurred in carrying out the purposes of the fund;

- (6) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers;
- (7) ~~[Without the necessity of complying with the requirements of chapter 103D, retain]~~ Retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter;
- (8) Establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund; and
- (9) Require any department, agency, or employee of the State or counties to furnish information to the board to carry out the purposes of this chapter.”

SECTION 16. Section 103-53, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) This section shall not apply to:

- (1) Any procurement of less than \$25,000 or ~~that~~ is considered a small purchase under section 103D-305 and any state or county department contract of less than \$25,000;
- (2) Emergency purchases for the procurement of goods, services, or construction under section 103D-307, disaster relief under chapter 127, or a civil defense emergency under chapter 128;
- (3) Grants and subsidies disbursed by a state agency pursuant to chapter ~~[42D]~~ 42F or in accordance with standards provided by law as required by article VII, section 4, of the State Constitution, or made by the counties pursuant to their respective charters or ordinances;
- (4) Contracts or agreements between government agencies;
- (5) Contracts or agreements to disburse funds:
 - (A) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, and reimbursements;
 - (B) To satisfy obligations required to be paid by law, including fees, judgments, settlements, and other payments for resolving claims;
 - (C) To make refunds or return funds held by the State or county as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
 - (E) For deposit, investment, or safekeeping, including sums to pay expenses related to their deposit investment, or safekeeping;
 - (F) For loans under government-administered loan programs; or
 - (G) To make periodic, recurring payments for utility services; and
- (6) Rent for the use or occupation of the premises and facilities at Aloha Stadium, the convention center, or any other state or county large spectator events facility[;];
- ~~(7) Contracts or agreements entered into pursuant to chapter 102; and~~
- ~~(8) Requirements of chapter 103D].”~~

SECTION 17. Section 103D-203, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary—the administrative director of the courts;

- (2) The senate—the president of the senate;
- (3) The house of representatives—the speaker of the house of representatives;
- (4) The office of Hawaiian affairs—the chairperson of the board;
- (5) The University of Hawaii—the president of the University of Hawaii;
- ~~[(5)]~~ (6) The department of education, excluding the Hawaii public library system—the superintendent of education; and
- ~~[(6)]~~ (7) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.”

2. By amending subsection (c) to read:

“(c) For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, University of Hawaii, department of education, remaining departments of the executive branch and all governmental bodies administratively attached to them, and the several counties, unless otherwise expressly provided, “State” shall mean “judiciary,” “state senate,” “state house of representatives,” “office of Hawaiian affairs,” “University of Hawaii”, “department of education,” “executive branch,” “county,” and “board of water supply,” or “department of water supply,” respectively.”

SECTION 18. Section 163D-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the corporation acquires the assets of a private or other corporation, then, notwithstanding any law to the contrary:

- (1) Neither the corporation nor any subsidiary corporation vested with the assets shall be subject to chapter 91 with respect to the assets;
- (2) Employees retained to operate the assets shall not be subject to chapter 76;
- (3) Assets constituting real property interest shall not be subject to chapter 171;
- (4) No investment, loan, or use of funds by the corporation or a subsidiary corporation vested with the assets shall be subject to chapter ~~[42D,]~~ 42F~~[,] or 103[, or 103D]~~; and
- (5) Neither the corporation nor a subsidiary corporation vested with the assets shall constitute a public utility or be subject to the jurisdiction of the public utilities commission under chapter 269.”

SECTION 19. Section 163D-15.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No expenditure, use, or transfer of funds from the Waiahole water system revolving fund by the corporation shall be subject to chapter ~~[42D,]~~ 42F~~[,] or 103[, or 103D]~~.”

SECTION 20. Section 163D-17, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) No investment, loan, grant, or use of corporate funds for the purposes of this chapter shall be subject to chapter 42F ~~[or 103D]~~.”

SECTION 21. Section 196-22, Hawaii Revised Statutes, is amended to read as follows:

“~~[F]~~**§196-22[] State energy projects.** State energy projects may be implemented under this chapter with the approval of the comptroller and the director of

finance. Notwithstanding section ~~[196-21 or section 36-41,]~~ 36-41 or 196-21, the comptroller or the senior agency official of the department of accounting and general services, along with the director of finance, may exempt a state energy project from the advertising and competitive bidding requirements of section ~~[196-21 or section 36-41]~~ 36-41 or 196-21 and ~~[chapters]~~ chapter 103 [and 103D], if the comptroller deems exemption appropriate for energy projects with proprietary technology or necessary to meet the goals of the legislature. In addition, this section shall be construed to provide the greatest possible flexibility to agencies in structuring agreements entered into so that economic benefits and existing energy incentives may be used and maximized and financing and other costs to agencies may be minimized. The specific terms of energy performance contracting under section 36-41 may be altered if deemed advantageous to the agency and approved by the director of finance and the senior agency official.”

SECTION 22. Section 201-85, Hawaii Revised Statutes, is amended to read as follows:

“§201-85 Exemptions. The department is authorized to hire employees necessary to staff its out-of-state offices subject to chapter 76 and legislative appropriations. The department may also appoint such other employees exempt from chapter 76 as may be necessary to administer the affairs of its out-of-state offices. The initial appointment shall not exceed three years, during which time the department shall submit to the legislature a request for approval prior to continuation of the position. The department shall set the duties, responsibilities, salaries, holidays, vacations, leaves, hours of work, and working conditions for these employees. Subject to the approval of the director of budget and finance, the department may be exempted from the following state laws only to the extent necessary for the conduct of its business in operating out-of-state offices:

- (1) Sections 36-27 and 36-30, relating to special fund transfers and reimbursements to the general fund;
- ~~[(2) Chapter 103D, relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended;~~
- ~~[(3)]~~ (2) Chapter 36, relating to management of state funds;
- ~~[(4)]~~ (3) Chapter 38, relating to deposits of public funds;
- ~~[(5)]~~ (4) Chapter 40, relating to audit and accounting, except that the department shall comply with section 40-81;
- ~~[(6)]~~ (5) Chapter 76, relating to civil service;
- ~~[(7)]~~ (6) Chapter 77, relating to compensation;
- ~~[(8)]~~ (7) Section 78-1, relating to public employment, except when expressly hiring personnel subject to section 78-1; and
- ~~[(9)]~~ (8) Section 171-30, relating to acquisition of real property.

All moneys necessary for the establishment and operation of out-of-state offices shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.”

SECTION 23. Section 201G-13, Hawaii Revised Statutes, is amended to read as follows:

“§201G-13 Development of property; additional powers. Notwithstanding any provision to the contrary, whenever the bids submitted for any development or rehabilitation project authorized pursuant to subparts A, B, G, and H of part II exceed the amount of funds available for that project, the corporation, with the approval of the governor, may disregard the bids and enter into an agreement to

carry out the project, or undertake the project or participate in the project under the agreement~~[- without regard to chapter 103D]~~; provided that the total cost of the agreement and the corporation's participation, if any, shall not exceed the amount of funds available for the project; provided further that if the agreement is with a nonbidder, the scope of the project under agreement shall remain the same as that for which bids were originally requested."

SECTION 24. Section 201G-114, Hawaii Revised Statutes, is amended to read as follows:

"~~[E]~~**§201G-114[] Additional powers; development.** Notwithstanding and without compliance with section 103-7 ~~[and chapter 103D]~~ but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this chapter. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred upon it by part I and any other law, and nothing herein shall be construed as limiting any powers, rights, privileges, or immunities so conferred upon it."

SECTION 25. Section 201G-455, Hawaii Revised Statutes, is amended to read as follows:

"~~[E]~~**§201G-455[] Program administration.** To the extent that appropriations are made available, the corporation may contract with a provider agency to administer homeless facilities, or any other program for the homeless created by this part. The selection of provider agencies to administer homeless facilities, or any other program for the homeless authorized by this part, shall not be subject to chapters 42F, 102, 103, ~~[103D,]~~ and 103F. The selection of provider agencies shall be subject to qualifying standards and criteria established by rule."

SECTION 26. Section 206E-182, Hawaii Revised Statutes, is amended to read as follows:

"~~[E]~~**§206E-182[] Powers.** In addition and supplemental to the powers granted to the authority by law, the authority may:

- (1) With the approval of the governor, ~~[and without regard to chapter 103D,]~~ enter into a special facility lease or an amendment or supplement thereto whereby the authority agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by another person to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield all or a portion of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);
- (4) Perform and carry out the terms and provisions of any special facility lease;
- (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or

accept the assignment of any contract therefor entered into by the other person to the special facility lease;

- (6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and
- (7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. ~~Neither the undertaking by the other person nor the acceptance by the authority of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D.]”~~

SECTION 27. Section 206M-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The corporation shall be exempt from ~~[chapters]~~ chapter 102 ~~[and 103D].~~”

SECTION 28. Section 206M-42, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§206M-42[H] Powers.** In addition to any other powers granted to the development corporation by law, the development corporation may:

- (1) With the approval of the governor, ~~[and without public bidding,]~~ enter into a special facility lease or an amendment or supplement thereto whereby the development corporation agrees to acquire, construct, improve, install, equip, and develop a special facility solely for the use by another party to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any acquisition, construction, improvement, installation, equipping, and development of any special facility, including, subject to paragraph (6), the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this section shall not exceed \$100,000,000;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this refunding purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds that may be issued as provided in paragraph (2);
- (4) Perform and carry out the terms and provisions of any special facility lease;
- (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, improve, install, equip or develop any special facility, or accept the assignment of any contract therefor entered into by the other party to the special facility lease;
- (6) Construct any special facility on land owned by the State; provided that no funds derived herein shall be expended for land acquisition; and
- (7) Agree with the other party to the special facility lease whereby any acquisition, construction, improvement, installation, equipping, or development of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person.¹ ~~Neither the~~

~~undertaking by the other person nor the acceptance by the development corporation of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D].”~~

SECTION 29. Section 227D-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

~~“(b) The authority shall not be subject to [any requirement of law for competitive bidding, including] the requirements of [chapters] chapter 103 [and 103D] for project agreements, construction contracts, retail concession or tour-related contracts, or other contracts unless a project agreement with respect to a project or research and technology park shall require otherwise.”~~

SECTION 30. Section 245-23, Hawaii Revised Statutes, is amended to read as follows:

“[§245-23] Department to furnish stamps; designs, specifications, and denominations; procurement. The department shall furnish stamps for sale to licensees. Stamps shall be of such designs, specifications, and denominations as may be prescribed by the department. ~~[Purchase by the department of stamps from a vendor shall be exempt from the requirements of chapter 103D.]”~~

SECTION 31. Section 255D-4, Hawaii Revised Statutes, is amended to read as follows:

“[§255D-4] Authority to enter agreement. The department may enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department may take other actions reasonably required to implement this section. Other actions authorized by this section include but are not limited to the adoption of rules not subject to chapter 91 ~~[and the joint procurement not subject to chapter 103D]~~, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or the department’s designee, may represent this State before the other states that are signatories to the agreement.”

SECTION 32. Section 261-52, Hawaii Revised Statutes, is amended to read as follows:

“§261-52 Powers. In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, ~~[and without public bidding,]~~ enter into a special facility lease or an amendment or supplement thereto whereby the department agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by another person to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility, including the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authoriza-

- tion of this paragraph shall not exceed \$200,000,000; provided further that these funds shall not be expended on nonpublic air facilities;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);
 - (4) Perform and carry out the terms and provisions of any special facility lease;
 - (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;
 - (6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and
 - (7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. ~~[Neither the undertaking by the other person nor the acceptance by the department of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D:]~~”

SECTION 33. Section 266-52, Hawaii Revised Statutes, is amended to read as follows:

“§266-52 Powers. In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, ~~[and without public bidding,]~~ enter into a special facility lease or an amendment or supplement thereto whereby the department agrees with another person engaged in maritime and maritime-related operations to construct, acquire, remodel, furnish, or equip a special facility solely for the use by such other person to a special facility lease; provided that such special facility lease may be amendatory and supplemental to an existing lease between the department and such other person for the land upon which the special facility which is the subject of such special facility lease is to be situated~~[-]~~;
- (2) With the approval of the governor:
 - (A) Issue special facility revenue bonds in such principal amounts as may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this subparagraph shall not exceed \$100,000,000; and
 - (B) Issue special facility revenue refunding bonds, without further authorization by the legislature, to refund outstanding special facility revenue bonds, including special facility revenue refunding bonds, or any part thereof, at or before the maturity or redemption date, issued pursuant to this part; provided that any

- issuance of the refunding bonds shall not reduce the amount authorized by the legislature as provided in paragraph (2)(A)[-];
- (3) Perform and carry out the terms and provisions of any special facility lease[-];
 - (4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, remodel, furnish, or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease[-];
 - (5) Construct any special facility on land owned by the State[-]; and
 - (6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by such other person. ~~[Neither such undertaking by such other person nor the acceptance by the department of a contract theretofore entered into by such other person therefor, shall be subject to chapter 103D.]~~

SECTION 34. Section 302A-415, Hawaii Revised Statutes, is amended to read as follows:

~~“[§302A-415] Motor vehicles for driving instruction; purchase and sale.~~ ~~[Chapter 103D to the contrary notwithstanding, the]~~ The department may enter into agreements with any dealer or company for the purchase of motor vehicles for driving instruction in the public schools if the agreements provide that the department pay \$1 for each motor vehicle, take title thereto in the name of the State, and agree to resell it to the seller for \$1 within sixty days following the last day of the school year. In the event of the seller's failure to repurchase, the department may retain the motor vehicle or dispose of it in accordance with rules adopted under chapter 91.”

SECTION 35. Section 304-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~“(d) The board shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, [but not] subject to chapter 103D.¹ [However, where possible, the board is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the board to any other provision of chapter 103D.]”~~

SECTION 36. Section 304-8.94, Hawaii Revised Statutes, is amended as follows:

~~“[§304-8.94] Conference center revolving fund.~~ There is established a revolving fund for the conference center program in the college of continuing education and community service of the University of Hawaii, Manoa campus. All fees, charges, and other moneys collected in conjunction with the conference center program shall be deposited in the revolving fund. The dean of the college of continuing education and community service is authorized to expend funds from the revolving fund for all costs associated with conducting conferences, seminars, and courses by the conference center program, including but not limited to[-] expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, airfare and per diem, leis, rental of audio-visual equipment, and conference supplies and materials[-, without regard to chapter 103D and section 103-42].”

SECTION 37. Section 323F-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other law to the contrary, the corporation shall have and exercise the following duties and powers:

- (1) Developing its own policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the system of public health facilities and services without regard to chapter 91;
- (2) Evaluating the need for health facilities and services;
- (3) Entering into and performing any contracts, leases, cooperative agreements, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms it may deem appropriate, with either:
 - (A) Any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof; or
 - (B) Any person, firm, association, or corporation, whether operated on a for-profit or not-for-profit basis;
 provided that the transaction furthers the public interest;
- (4) Conducting activities and entering into business relationships as the corporation board deems necessary or appropriate, including but not limited to:
 - (A) Creating nonprofit corporations, including but not limited to charitable fund-raising foundations, to be controlled wholly by the corporation or jointly with others;
 - (B) Establishing, subscribing to, and owning stock in business corporations individually or jointly with others; and
 - (C) Entering into partnerships and other joint venture arrangements, or participating in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity; provided that any corporation, venture, or relationship entered into under this section furthers the public interest; provided further that this paragraph shall not be construed to authorize the corporation to abrogate any responsibility or obligation under paragraph (15);
- (5) Participating in and developing prepaid health care service and insurance programs and other alternative health care delivery programs, including programs involving the acceptance of capitated payments or premiums that include the assumption of financial and actuarial risk;
- (6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any of the corporation’s powers;
- (7) Preparing and executing all corporation budgets, policies, and procedures;
- (8) Setting rates and charges for all services provided by the corporation without regard to chapter 91;
- (9) Developing a corporation-wide hospital personnel system that is subject to chapters 76 and 89;
- (10) Developing the corporation’s capital and strategic plans;
- (11) Suing and being sued; provided that the corporation shall enjoy the same sovereign immunity available to the State;
- (12) Making and altering corporation board bylaws for its organization and management without regard to chapter 91;
- (13) Adopting rules, without regard to chapter 91, governing the exercise of its powers and the fulfillment of its purpose under this chapter;

- (14) Entering into any contract or agreement whatsoever, not inconsistent with this chapter or the laws of this State, and authorizing the corporation chief executive officer to enter into all contracts, execute all instruments, and do all things necessary or appropriate in the exercise of the powers granted in this chapter, including securing the payment of bonds;
- (15) Issuing revenue bonds subject to the approval of the legislature; provided that all revenue bonds shall be issued pursuant to part III, chapter 39;
- (16) Reimbursing the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for the purposes of the corporation;
- (17) Pledging or assigning all or any part of the receipts and revenues of the corporation for purposes of meeting bond or health systems liabilities;
- (18) Owning, purchasing, leasing, exchanging, or otherwise acquiring property, whether real, personal or mixed, tangible or intangible, and of any interest therein, in the name of the corporation, which property is not owned or controlled by the State but is owned or controlled by the corporation;
- (19) Maintaining, improving, pledging, mortgaging, selling, or otherwise holding or disposing of property, whether real, personal or mixed, tangible or intangible, and of any interest therein, at any time and manner, in furtherance of the purposes and mission of the corporation; provided that the corporation legally holds or controls the property in its own name; ~~and~~ provided further that the corporation shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of all or substantially all of its property;
- (20) Purchasing insurance and creating captive insurers in any arrangement deemed in the best interest of the corporation, including but not limited to funding and payment of deductibles and purchase of reinsurance;
- (21) Acquiring by condemnation, pursuant to chapter 101, any real property required by the corporation to carry out the powers granted by this chapter;
- (22) Depositing any moneys of the corporation in any banking institution within or without the State, and appointing, for the purpose of making deposits, one or more persons to act as custodians of the moneys of the corporation;
- (23) Contracting for and accepting any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the State, any state agency, or any other source, or any combination thereof, and complying, subject to this chapter, with the terms and conditions thereof;
- (24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation or association through or in the health facilities of the corporation or otherwise;
- (25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities, including without limitation, determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, and adopting and implementing reasonable rules, without regard to chapter 91, for the credentialing and peer review of all persons and health professionals within the facility;
- (26) (A) Investing any funds not required for immediate disbursement in property or in securities that meet the standard for investments established in chapter 88 as provided by the corporation board;

provided the investment assists the corporation in carrying out its public purposes; selling from time to time securities thus purchased and held, and depositing any securities in any bank or financial institution within or without the State. Any funds deposited in a banking institution or in any depository authorized in this section shall be secured in a manner and subject to terms and conditions as the corporation board may determine, with or without payment of any interest on the deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any bank or financial institution incorporated under the laws of this State may act as depository of any funds of the corporation and may issue indemnity bonds or may pledge securities as may be required by the corporation board[-]; and

- (B) Notwithstanding subparagraph (A), contracting with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation and of any moneys held in trust or otherwise for the payment of notes or bonds and carrying out the contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and deposits of such moneys, may be secured in the same manner as moneys of the corporation, and all banks and trust companies are authorized to give security for the deposits;
- (27) Entering into any agreement with the State including but not limited to contracts for the provision of goods, services, and facilities in support of the corporation's programs, and contracting for the provision of services to or on behalf of the State;
- (28) Having a seal and altering the same at pleasure;
- (29) Waiving, by means that the corporation deems appropriate, the exemption from federal income taxation of interest on the corporation's bonds, notes, or other obligations provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption;
- (30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices[~~, but not subject to chapter 103D. However, where possible, the corporation is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the corporation to any other provision of chapter 103D~~];
- (31) Authorizing and establishing positions;
- (32) Calling upon the attorney general for such legal services as the corporation may require; and
- (33) Having and exercising all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter."

SECTION 38. Section 329-58, Hawaii Revised Statutes, is amended to read as follows:

“§329-58 Education and research. (a) The department of public safety shall carry out educational programs designed to prevent and determine misuse and abuse of controlled substances. In connection with these programs it may:

- (1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- (3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) Disseminate the result of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them;
- (6) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

~~[(b) The department of public safety may enter into contracts for educational and research activities without performance bonds and without regard to chapter 103D.~~

(e) (b) The department of public safety may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are subjects of research for which the authorization was obtained.

~~[(d)]~~ (c) The department of public safety may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.”

SECTION 39. Section 354D-4, Hawaii Revised Statutes, is amended to read as follows:

“§354D-4 Powers and duties of the director. Under the supervision of the director or the director’s designee, the administrator of the correctional industries program shall:

- (1) Develop programs generating revenue that best sustains their operation and allows for capital investment, and reimburses the general fund, when possible, for the expense of correctional services;
- (2) Develop programs providing the maximum level of work and training opportunities for qualified, able-bodied inmates;
- (3) Develop programs assuming responsibility for training qualified, able-bodied inmates in general work and specific training skills that increase their employment prospects after release;
- (4) Develop programs in which inmates can learn skills used in the construction and other industries, while providing low-cost construction, renovation, and repairs of facilities, grounds, furniture, vehicles, and equipment for private, nonprofit social services, health, or education agencies and programs;

- (5) Acquire or purchase equipment, materials, supplies, office space, insurance, and services necessary to establish and maintain programs pursuant to this chapter;
- (6) ~~[Utilize]~~ Use labor services of qualified, able-bodied inmates in the manufacture or production of goods and services that are needed for the construction, operation, or maintenance of any office, department, institution, or agency supported in whole or in part by the State, the counties, or the federal government;
- (7) Sell all goods and services to the State, the counties, or the federal government;
- ~~[(8) Enter into any contract or agreement and execute all instruments consistent with this chapter and exempt from chapter 103D;~~
- (9) (8) Purchase, lease, trade, exchange, acquire, and maintain personal property; and
- ~~[(10)]~~ (9) Accept grants or loans from the State, the counties, or the federal government."

SECTION 40. Section 354D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The administrator may purchase or cause to be purchased and maintained all necessary materials, supplies, space, services, and equipment required for the operation of the program. ~~[Notwithstanding any other provision to the contrary, purchases by the administrator for the manufacture of any goods or services shall be exempt from the public bidding requirements of chapter 103D.]~~"

SECTION 41. Section 383-128, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The department may contract for employment, education, and training services from public and private agencies and nonprofit corporations. Contracts, pursuant to subsection (b), shall be exempt from ~~[chapters 103D and]~~ chapter 103F so funds for these services may be expended in a timely manner to effectuate the purposes of this section. All other disbursements shall be in accordance with chapters 103D and 103F."

SECTION 42. Section 412:12-108, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Hawaii state bank or an out-of-state state bank operating a branch in this State pursuant to this article to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation. ~~[Any contract executed under this section shall be exempt from the requirements of chapter 103D.]~~"

SECTION 43. Section 412:13-224, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In order to carry out the purposes under this article, the commissioner may:

- (1) Enter into cooperative, coordinating, or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;
- (2) With respect to periodic examination or other supervision of a foreign bank that maintains a Hawaii state branch, Hawaii state agency, or Hawaii representative office, accept reports of examinations performed

by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;

- (3) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank; provided that the commissioner, at any time, may take any action independently if the commissioner determines that the action is necessary or appropriate to carry out the commissioner's responsibilities under this article and to ensure compliance with the laws of this State;
- (4) Enter into contracts~~[, exempt from the requirements of chapter 103D,]~~ with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a Hawaii state branch, Hawaii state agency, or Hawaii representative office, to engage the services of the agency's examiners at a reasonable rate of compensation; and
- (5) Assess supervisory, examination, and other fees and charges that shall be payable by foreign banks maintaining a Hawaii state branch, Hawaii state agency, or Hawaii representative office in connection with the commissioner's performance of the commissioner's duties under this article and in accordance with this chapter and rules adopted by the commissioner."

SECTION 44. Section 431:22-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established a special fund to be designated as the loss mitigation grant fund. Moneys transferred to the loss mitigation grant fund may be expended by the commissioner to carry out the commissioner's duties and obligations under this article. Disbursements from the loss mitigation grant fund shall not be subject to chapter 42F~~[,]~~ or 91~~[, or 103D]~~."

SECTION 45. Section 87A-20, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 46. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 47. This Act shall take effect on January 1, 2005.

(Approved July 13, 2004.)

Note

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 217

H.B. NO. 1893

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The University of Hawaii is the designated State of Hawaii recipient of funds granted by the United States Department of Education under a program entitled Gaining Early Awareness and Readiness for Undergraduate Pro-

grams ("GEAR UP"), established pursuant to P.L. 105-244, the 1998 Amendments to the Higher Education Act of 1985, codified at 20 U.S.C. §1070a-21 et seq.

In order to award scholarships consistent with the requirements for scholarships under GEAR UP, the University of Hawaii must establish a separate charitable trust to hold funds received under GEAR UP until they can be awarded to individual students from among the class of eligible scholarship recipients. This Act confirms the authority of the University of Hawaii to establish such a charitable trust; and exempts the establishment of such a trust and specification of scholarship recipient eligibility criteria therein, consistent with requirements of participation in the GEAR UP program and any conditions or criteria imposed by the University of Hawaii, from the definitions of "rules" or "rulemaking" within the meaning of and subject to the provisions of chapter 91, and the processes and procedures mandated therefore, and from any other provisions of chapter 91.

This Act also confirms the private nature of the trust established for the purposes described above, and confirms that neither the charitable trust, nor any trustee thereof, shall be deemed a department, office, agency, board, commission, bureau, instrumentality, committee, authority, or office of the State or any of its political subdivisions, or otherwise deemed a public or quasi-public entity, nor shall the initial funding of or a future transfer to the trust by the University of Hawaii, or any of its subdivisions, constitute a state grant or subsidy.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§304- GEAR UP Hawaii scholarship trust fund. (a) The University of Hawaii, in its sole discretion, may establish a charitable trust, recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to be known as the "GEAR UP Hawaii scholarship trust fund" and appoint one or more trustees thereof. The purpose of the trust is to establish and maintain a financial assistance program to award scholarships to eligible students in accordance with the requirements of funds received from the United States Department of Education under the program entitled Gaining Early Awareness and Readiness for Undergraduate Programs ("GEAR UP"), established pursuant to P.L. 105-244, the 1998 Amendments to the Higher Education Act of 1985, codified at 20 U.S.C. §1070a-21 et seq. The University shall transfer to the trust all funds received under GEAR UP upon such terms and conditions consistent with the requirements of GEAR UP, as it may be amended, and as the University of Hawaii, as settlor of the trust, may determine in its discretion.

(b) The establishment of the trust described in subsection (a), including, but not limited to the specification by the University of Hawaii as its settlor, of any specific criteria or other eligibility requirements for scholarship awards, shall not be deemed to be "rules" or "rulemaking" subject to chapter 91, or otherwise be subject to chapter 91.

(c) Neither the trust established by the University of Hawaii pursuant to subsection (a), nor any trustee thereof, shall be a department, office, agency, board, commission, bureau instrumentality, committee, authority, or office of the State or any of its political subdivisions, or otherwise deemed a public or quasi-public entity, nor shall the initial funding of, or a transfer to, the trust constitute a state grant or subsidy. The trust shall not be subject to laws or rules governing state and other public or quasi-public entities, including but not limited to chapters 23, 36, 37, 38, 40, 42F, 76, 78, 84, 89, 91, 92, 92F 103, and 103D.

(d) This section shall be liberally construed so as not to hinder or impede the University of Hawaii in its participation in GEAR UP including, but not limited to, the establishment of the trust and its operation."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved July 13, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 218

H.B. NO. 2840

A Bill for an Act Relating to Enhancing Economic Diversity.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that technology-based jobs are high paying and important in helping to expand and diversify Hawaii's economy. Hawaii has recently made a concerted effort to attract high technology companies to Hawaii by enacting Act 221, Session Laws of Hawaii 2001, which provides a tax credit to qualifying high technology companies. In addition to these initiatives, Hawaii needs to develop a highly skilled and trained workforce to attract these high technology companies and jobs to Hawaii.

The project EAST (environmental and spatial technology) initiative started as a pilot program in the Maui district high schools during the summer of 2000 and later moved to Hawaii county and then a middle school on Kauai. Project EAST holds great potential for assisting Hawaii's public schools in developing important critical thinking, problem solving, and analytical skills in Hawaii's young people which are necessary to these individuals to succeed in high technology based jobs. Project EAST integrates cutting edge technology, such as computer assisted drafting, geographic information systems, global positioning systems, as well as computer graphic applications, such as soft image, into the educational curriculum. The goal of this initiative is to prepare students for the information technology age by providing a comprehensive project-based and student-centered learning program where the students are responsible for their own learning.

The project EAST initiative is a public-private partnership developed by business leaders and educators that has enabled technology-challenged schools to compete nationally and succeed. More important, this program enables students to develop crucial skills necessary for them to succeed in life while making the educational experience relevant and educational outcomes measurable.

Act 309, Session Laws of Hawaii 2001, established a dual approach program for Hawaii's public schools to meet a formidable backlog of repair and maintenance – a tax credit for contributions of badly needed in-kind services and a fund established outside the state treasury under Helping Hands Hawaii. Hawaii 3Rs has been highly successful in building a strong network of public and private sector coalitions and identifying additional funding and other resources for the benefit of public school facilities.

The purpose of this Act is to support these successful private-public economic initiatives by establishing the Hawaii 3Ts school technology laboratories fund outside the state treasury for the continuation and expansion of the project EAST initiative or similar programs on all islands.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Hawaii 3Ts school technology laboratories fund. (a) There is established the Hawaii 3Ts school technology laboratories fund (hereinafter, “fund”) as a separate fund of the Economic Development Alliance of Hawaii Inc., a Hawaii nonprofit organization. Moneys received from the state, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.

(b) The Economic Development Alliance of Hawaii Inc. shall expend moneys in the form of either grants to organizations or contracts with private vendors from the fund for the establishment and maintenance of technology laboratories in public schools in Hawaii. Such expenditures shall be in accordance with this section, and consistent with the criteria and recommendations of the Hawaii 3Ts school technology laboratories board.

(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The legislature intends that the public and private sectors work together as partners in securing contributions for the fund, and that the Economic Development Alliance of Hawaii Inc., through its Hawaii 3Ts project, assist the public and private sectors in reviewing and investigating all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing public school programs for the establishment and maintenance of school technology laboratories.

(d) The Economic Development Alliance of Hawaii Inc. shall appoint the members of the Hawaii 3Ts school technology laboratories board, which shall be responsible for:

- (1) Soliciting and otherwise raising moneys for the fund;
- (2) Establishing criteria for proposals to be funded and the expenditure of funds;
- (3) Reviewing grant proposals utilizing criteria established by Hawaii 3Ts school technology laboratories board; and
- (4) Making recommendations for grants and other specific expenditures to the Economic Development Alliance of Hawaii Inc.

Members of the advisory board shall be stakeholders in Hawaii’s public education and workforce development entities, including students and parents, teachers and principals, business and community leaders, representatives from the county economic development boards, and representatives from the department of education, the department of business, economic development, and tourism, and the department of accounting and general services, who shall be represented on the advisory board.

(e) In managing the moneys in the fund, the Economic Development Alliance of Hawaii Inc. shall exercise ordinary business care and prudence given the facts and circumstances prevailing at the time of action or decision. In doing so, the Economic Development Alliance of Hawaii Inc. shall consider its long-term and short-term needs in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price trends, and general economic conditions.

(f) There may be an endowment component of the fund.

(g) The use of any state moneys may be restricted by the legislation appropriating these moneys to the fund.

(h) The Economic Development Alliance of Hawaii Inc. is authorized to expend the principal from the fund for the purposes of the fund.

(i) Any organization submitting a proposal to the Economic Development Alliance of Hawaii Inc. for fund moneys shall meet all of the following standards at the time of applications:

- (1) Be a for-profit organization duly registered under the laws of the State, or be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) In the case of an applicant that is not a state or county government agency, have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
- (4) Have experience with the project or in the program area for which the proposal is being made; and
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.

(j) All proposals approved by the Hawaii 3Ts school technology laboratories board and for which the Economic Development Alliance of Hawaii Inc. intends to provide fund moneys shall be approved by the director of business, economic development, and tourism for consistency in meeting the purposes of this section.

(k) Organizations or agencies to which fund moneys are awarded shall agree to comply with the following conditions before receiving the award:

- (1) Employ or have under contract persons qualified to engage in the activity to be funded;
- (2) Comply with applicable federal, state, and county laws; and
- (3) Comply with any other requirements prescribed by the Economic Development Alliance of Hawaii Inc. to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.

(l) Chapter 103D shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that the Economic Development Alliance of Hawaii Inc. shall be held accountable for the use of the funds under a contract with the department of business, economic development, and tourism.

(m) Any contracts awarded by the Economic Development Alliance of Hawaii Inc. shall be made under as much competition as practical to execute its purposes.

(n) The fund shall be audited annually by an independent auditor retained by the Economic Development Alliance of Hawaii Inc. The auditor's report of each annual audit shall be submitted to the department of business, economic development, and tourism not later than thirty days from the date the audit report is received by the Economic Development Alliance of Hawaii Inc. In addition, the Economic Development Alliance of Hawaii Inc. shall retain for a period of three years, and permit the department of accounting and general services, the department of education, the department of business, economic development, and tourism, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to, any documents, papers, books, records, and other evidence that is pertinent to the fund.

(o) The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund, the Economic Development Alliance of Hawaii Inc., or Hawaii 3Ts.

(p) For every dollar granted to a recipient by the fund, a minimum of 50 cents in value shall be from private, federal, county, or community sources.

(q) For purposes of this section, "school technology laboratory" means a multi-station computer laboratory that offers students a variety of different types of hardware and software applications."

ACT 219

SECTION 3. The Economic Development Alliance of Hawaii Inc. shall submit an annual report for approval by the director of business, economic development, and tourism on the progress of the Hawaii 3Ts school technology laboratories fund by December 1 of each year. The director of business, economic development, and tourism shall transmit the report along with comments from the department of business, economic development, and tourism to the legislature no later than twenty days prior to the convening of each regular session.

SECTION 4. If any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2004.

(Approved July 13, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 219

S.B. NO. 17

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that studies nationally and locally have found substantial differences between “older” students and “younger” students within a grade, terms of their performance and ability. Students at greatest risk are boys born between July and December. They account for a disproportionate number of students who are retained at their present grade level, have school adjustment problems, or are certified as learning disabled. Comparisons between Hawaii students and students in other states on national achievement tests in later grades are likely to be more equitable if the entry age of Hawaii student is more closely aligned to that of most other states.

In light of these and other findings, the legislature is committed to school readiness. The legislature finds that it is necessary to create conditions that will enable children in Hawaii to succeed in kindergarten and subsequent school experiences. Act 13, Session Laws of Hawaii 2002, relating to education defines school readiness as “young children are ready to have successful learning experiences in school when there is a positive interaction among the child’s developmental characteristics, school practices, and family and community support.”

The legislature finds that students born in the latter half of the calendar year will benefit from a more targeted developmentally appropriate curriculum geared to

their young age. By addressing the range of learners in the kindergarten classroom, the public educational system can better ensure success for students in their early years, provide a more level playing field for students, and improve overall educational outcomes for students.

Accordingly, the purpose of this Act is to establish a two-tier junior kindergarten and kindergarten to implement a developmentally appropriate curriculum. The program will be sufficiently flexible to allow those junior kindergarten students deemed ready to participate in kindergarten to do so, and provide those students who may need additional support to move from kindergarten to junior kindergarten. This will facilitate the progress of junior kindergarten and kindergarten students to the first grade. Children in the program who could benefit from another year may continue in kindergarten for a second year.

SECTION 2. Section 302A-411, Hawaii Revised Statutes, is amended to read as follows:

“§302A-411 [Kindergartens;] Junior kindergarten and kindergarten program; establishment; attendance. (a) The department shall establish and maintain junior kindergartens and kindergartens with a program of instruction as a part of the public school system; provided that [attendance shall not be mandatory. No child shall attend any kindergarten unless the child will be at least five years of age on or before December 31 of the school year; provided that a child attending a school that convenes after the regular school schedule shall be five years of age on or before one hundred twenty-five days following the date the school convenes; and provided further that the board shall develop informational guidance to promote the understanding of a child’s readiness for kindergarten.];

(1) Attendance shall not be mandatory; and

(2) New century charter schools and new century conversion charter schools shall be excluded from mandatory participation in the program.

(b) The department shall establish a two-tier junior kindergarten and kindergarten program to support the range of developmental abilities of children in junior kindergarten and kindergarten. Any school may move students between junior kindergarten and kindergarten as the school deems appropriate. Junior kindergarten students may graduate directly to grade one. The program shall include any or all of the following models:

(1) Classrooms composed exclusively of either junior kindergarten or kindergarten students;

(2) Coordination with public, private, or public-private entities to address the needs of junior kindergarten-eligible students within the school’s community; and

(3) The blending of junior kindergarten and kindergarten students in a single classroom.

(c) Beginning with the 2004-2005 school year, a child who will be at least five years of age on or before December 31 of the school year may attend a public school kindergarten. Beginning with the 2006-2007 school year, a child who will be at least five years of age on or before August 1 of the school year may attend a public school kindergarten. Beginning with the 2006-2007 school year, a child who will be at least five years of age after August 1 and before January 1 of the school year may attend a public school junior kindergarten.

[(b)] (d) The department may accept gifts to establish and maintain junior kindergartens and kindergartens.”

SECTION 3. Section 302A-1131, Hawaii Revised Statutes, is repealed.

SECTION 4. During the 2004-2005 school year, the department of education shall develop a plan to assist schools for the development of the two-tier junior kindergarten and kindergarten program. During the 2005-2006 school year schools will be encouraged to explore and pilot strategies focused on the effective implementation of the junior kindergarten and kindergarten program. Beginning with the 2006-2007 school year, all elementary schools, excluding new century charter schools and new century conversion charter schools, shall implement the two-tier junior kindergarten and kindergarten program, with public school kindergartens accommodating children born January to August 1 and public school junior kindergartens accommodating children born August 2 to December 31.

SECTION 5. The department of education shall submit findings and recommendations to the legislature regarding the implementation of the two-tier junior kindergarten and kindergarten program no later than twenty days prior to the regular sessions of 2005, 2006, and 2007.

SECTION 6. The department of education shall develop assessments to aid in the placement of students in the appropriate classroom for the purposes of section 2 of this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2004-2005, for planning, piloting, curriculum development, assessment, and reporting, including longitudinal data, of the two-tier junior kindergarten and kindergarten program.

SECTION 8. The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval; provided that sections 6 and 7 shall take effect on July 1, 2004.

(Approved July 13, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 220

S.B. NO. 2063

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Textbook and instructional materials fee special account. There is established within the department a textbook and instructional materials fee special account, into which shall be deposited all fees and charges collected from students or their parents or guardians pursuant to section 302A-1130.5. Disbursements from this special account shall be expended by the department for the

purposes of purchasing, replacing, or repairing school textbooks, instructional materials, library books, equipment, or supplies.”

SECTION 2. Section 302A-101, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““School textbooks, instructional materials, library books, equipment, or supplies” includes any book, printed matter, or other material used in a particular course of study.”

SECTION 3. Section 302A-442.5, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~302A-442.5] **Instructional materials**[~~;~~]; **exceptional children.** (a) Whenever used in this section, unless a different meaning clearly appears from the context:

“Braille” means the system of reading and writing through touch commonly known as standard English braille.

[~~“Textbooks and other instructional materials” means any literary or nonliterary works obtained for use in a course of study.~~]

(b) All publishers of textbooks [~~or other~~] and instructional materials sold to the State or any [~~local education agency~~] public school shall furnish computer diskettes for literary subjects in the American Standard Code for Information Interchange from which braille versions can be produced. Publishers shall also furnish computer diskettes in American Standard Code for Information Interchange for nonliterary subjects including natural sciences, computer science, mathematics, and music when braille specialty code translation software is available.

(c) This section shall not apply to publishers of textbooks and [~~other~~] instructional materials written in the Hawaiian language.”

SECTION 4. Section 302A-1130, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1130 Public schools special fees and charges; [standards;] grouping of students.** (a) [~~No equipment, material, or other fees shall be assessed against any pupil in any school, except that the~~] The department may assess and collect special fees and charges from [~~pupils~~] students for co-curricular activities [~~and from pupils who negligently break, damage, lose, or destroy school books, equipment, or supplies. Any pupil found to be responsible for the loss, destruction, breakage, or damage of school books, which shall include library and textbooks, of equipment, or of supplies, shall make restitution to the school in any manner, including the payment by the pupil or the pupil’s parents of the actual replacement costs.~~]

(b) ~~No pupil shall be required to make restitution in any manner unless the pupil and the pupil’s parents or guardians have been notified and have been given an opportunity to be heard before the principal of the school on the charges that the pupil was responsible for the loss, destruction, breakage, or damage of school books, equipment, or supplies.~~

(c) If the principal, upon a hearing on the charges, has reasonable cause to believe that the pupil is responsible for the loss, destruction, breakage, or damage of school books, equipment, or supplies, the principal shall design a restitution program that shall be submitted to the pupil and the pupil’s parents or guardian for agreement in writing.

If restitution is made in this fashion, then no information about the charges, the hearing, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the determination made by the principal, the principal shall report to the complex area superintendent the determination and the findings made by the principal, including all the records and documents regarding the investigation, for any further action.

(d) Notwithstanding any other provisions in this section to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this section shall limit the right of the State to bring any action against any person to recover the damages].

~~[(e)]~~ (b) Special fees and charges collected from ~~[pupils]~~ students for co-curricular activities shall be deposited into insured checking or savings accounts and expended by each individual school ~~[under rules adopted by the department pursuant to chapter 91]~~.

~~[(f)]~~ Special fees and charges collected from pupils who negligently break, damage, lose, or destroy school books, equipment, or supplies shall be deposited in a fund and expended by the department under rules adopted pursuant to chapter 91.

~~[(g)]~~ (c) The department may ~~[continue to]~~ group ~~[pupils]~~ students within any public school in accordance with their abilities and educational needs.’’

SECTION 5. Section 302A-1130.5, Hawaii Revised Statutes, is amended to read as follows:

‘‘~~[[~~**§302A-1130.5**~~]]~~ **Textbook replacement fees, [fines,] restitution; textbook list.** ~~[(a)]~~ School principals shall recover special fees and charges for lost, damaged, destroyed, or broken books as authorized under section 302A-1130.

~~(b)~~ All special fees and charges for lost, damaged, destroyed, or broken books shall remain at the school level.

~~(c)~~ The school principal shall exercise any other supervisory powers that shall be necessary to provide satisfactory recovery and proper care of textbooks on a schoolwide basis as provided by law.] (a) The department may assess and collect special fees and charges from students who negligently break, damage, lose, or destroy school textbooks, instructional materials, library books, equipment, or supplies as determined by the principal. Any student found to be responsible for the loss, destruction, breakage, or damage of school textbooks, instructional materials, library books, equipment, or supplies, shall make restitution to the school, including the payment by the student or the student’s parents or guardians, of the actual replacement costs. Any fees collected pursuant to this subsection shall be deposited into the textbook and instructional materials fee special account established in 302A-

~~(b)~~ No student shall be required to make restitution unless the student and the student’s parents or guardians have been notified and have been given an opportunity to be heard before the principal of the school on the charge that the student was responsible for the loss, destruction, breakage, or damage of school textbooks, instructional materials, library books, equipment, or supplies.

~~(c)~~ If the principal, upon a hearing on the charge, has reasonable cause to believe that the student is responsible for the loss, destruction, breakage, or damage of school textbooks, instructional materials, library books, equipment, or supplies, the principal shall design a restitution program that shall be submitted to the student and the student’s parents or guardians for agreement in writing.

If restitution is made in this fashion, then no information about the charge, the hearing, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the student and student's parents or guardians do not agree with the determination made by the principal, the principal shall report the determination and the findings made by the principal and transfer all records and documents regarding the investigation to the complex area superintendent for any further action.

(d) Each school shall make available a copy of the current list of textbooks and instructional materials upon the request of a student or a parent or guardian of a student attending the school. The list shall be available not later than the tenth day of class in each school year.

(e) Notwithstanding any other provisions in this section to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this section shall limit the right of the State to bring any action against any person to recover the damages."

SECTION 6. Section 302A-1146, Hawaii Revised Statutes, is amended to read as follows:

~~“[§302A-1146] Schools [not to sell] merchandise[, etc].~~ It shall be unlawful for any public school, without the written permission of the department, to operate stores or to sell merchandise, with the following exceptions: school lunches, milk, ice cream, candy, ~~[things] and products made or grown at the school as part of the educational program[, and in cases where classroom efficiency, uniformity, or standardization of particular supplies is essential, textbooks, equipment, and necessary school supplies and equipment, may be sold by any school].~~ The department, with the advice of the comptroller, shall adopt rules in conformance with chapter 91 necessary for the purposes of this section."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2004.

(Approved July 13, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 221

H.B. NO. 2002

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that the after-school plus program, popularly known as "A-plus", was established to provide affordable after-school care for latchkey children. Initiated in 1990, the after-school plus program was billed as the nation's first subsidized, statewide after-school care program for public school students in kindergarten through grade six.

The legislature further finds that currently, fees and other moneys for the after-school plus program are deposited into the general fund. However, the deposit of program fees and moneys into the general fund does not guarantee that the fees and moneys will be dedicated to the after-school plus program.

The establishment of a revolving fund for the after-school plus program would provide a clear nexus between the fees assessed and collected for after-school program services and the provision of those services.

The purpose of this part is to create a revolving fund for the collection and disbursement of moneys to pay for the administration and operations of the after-school plus program.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- After-school plus program revolving fund. (a) There is established the after-school plus program revolving fund to be administered by the department.

(b) The after-school plus program revolving fund shall consist of:

- (1) Fees collected by the department for administering and operating the after-school plus program, and the provision of program services;
- (2) Legislative appropriations;
- (3) All interest earned on the deposit or investment of moneys in the after-school plus program revolving fund; and
- (4) Any other moneys made available to the after-school plus program revolving fund from other sources.

(c) The department may establish appropriate fees and other charges to be assessed to each participant for the cost of administering and operating the after-school plus program. The revenues from those fees and charges shall be deposited into the revolving fund to be used to pay the costs of administering and operating the program.”

SECTION 3. There is appropriated out of the after-school plus program revolving fund the sum of \$6,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 to be used to pay the costs of administering and operating the after-school plus program.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

PART II

SECTION 4. The legislature finds that S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1 (Regular Session 2004)¹, is a comprehensive measure that ambitiously aims to reinvent the public education system in numerous important ways. Some of the most critical goals of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, are to:

- (1) Address the individual needs of students by requiring the establishment of a weighted student formula for allocating moneys to public schools;
- (2) Require no less than seventy per cent of operating funds for the department of education, excluding debt service and capital improvement programs to be expended by school principals;
- (3) Empower principals as educational leaders of their schools;
- (4) Support principals and involve school communities by establishing school community councils at public schools;
- (5) Require the development of plans, to be implemented in the 2006-2007 school year, for performance contracts for principals;
- (6) Remove bureaucratic constraints that hamper the effectiveness of the department of education;
- (7) Enhance the accountability system of the department of education; and
- (8) Provide more books and learning materials for students.

These are only some of the ways in which S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, seeks to improve Hawaii's public schools. In recognition of the importance of this essential and revolutionary bill, the legislature took early action to ensure that the governor and other concerned stakeholders had ample time to reflect upon the bill and express their concerns or suggest improvements which could be addressed before the end of the legislative session.

One suggestion for amending this bill was to accelerate the implementation of the weighted student formula. S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, sets an extremely ambitious agenda for Hawaii's public schools. They will be faced with a new funding allocation system, a new school community council system, and new responsibilities in expending an increased percentage of their operating budget at the school level.

S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, provides funding for the department of education to pilot school community councils and the development of academic and financial plans. This Act specifies that this pilot program shall be implemented no later than January 1, 2005, ensuring the department of education begins these critical aspects of the education reinvention effort in a timely manner.

Other suggestions for amending the bill were to ensure that principals are sufficiently empowered to manage effectively, and clarify the relationship between principals and school community councils to ensure that decision-making can be executed efficiently. Although S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, expressly places principals in control of their schools, the legislature finds that more can be done to ensure their ability to effectively lead. This Act specifies that principals, rather than school community councils, shall be responsible for the initial development of their schools' academic and financial plans. This will ensure that principals are intimately involved in the formulation and execution of their schools' educational and fiscal goals.

A final suggestion to improve S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, was to allow charter schools to choose whether they want to be funded under the weighted student formula. Accordingly, this Act allows charter schools to select, as a group, whether to receive allocations through the weighted student formula for each fiscal biennium.

In approving S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, the legislature has fashioned an innovative, comprehensive, and ambitious yet implementable law, the purpose of which is to improve student achievement. In doing this, the legislature has committed itself, the board of education, the department of education, the governor, and the entire state government to efforts that require actions and commitment over many years. The complete effort to reinvent public schools begins with the enactment of both S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, and this Act.

Upon enactment, the creation and work of the committee on weights begins. Work begins immediately to prepare for the implementation of the school community councils, which must be in place by July 1, 2005. Beginning January 1, 2005, one school in each complex area, or fifteen in total, will pilot the process that the principal and the school community councils will use in developing their individual school's academic and financial plan. All schools will have school community councils by July 1, 2005, and they will receive training for their duties, including reviewing and recommending for approval by the complex area superintendent the academic and financial plans for their school.

The principals academy will be developed during the latter half of 2004 to provide training for principals in developing and implementing budgets, writing academic plans, and working effectively with school community councils.

The board of education will initially adopt the weighted student formula recommended by the committee on weights by December 1, 2005. Principals will prepare and submit to the school community councils their academic and financial

plans, which will be approved by the complex area superintendent no later than April 1, 2006. School allocations based on the weighted student formula will be made by July 15, 2006.

As experience is gained, the funds that each principal will budget and expend may be increased by the department of education. Local control of schools will also increase, allowing the principal and the school community council to shape their particular school to meet the needs of their students.

Other actions are required to reinvent education, which include the development of performance-based contracts for principals, the adoption of a unified school calendar, and a reduction of the bureaucracy that hinders the department of education in providing support services for the schools. All of these actions will take place over the next three years. The legislature finds that the actions required to improve student achievement and the implementation of those requirements as set forth in S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, and this Act, are prudent and reasonable. The legislature invites the people of this State to lend their support, time, and participation in this endeavor to improve student achievement.

SECTION 5. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- New century charter schools and new century conversion charter schools; weighted student formula. Notwithstanding section 302A-1185 and beginning on September 1, 2006, new century charter schools and new century conversion charter schools shall elect whether to receive allocations according to the weighted student formula adopted pursuant to section 302A- by the board of education; provided that:

- (1) All new century charter schools and new century conversion charter schools, as a group, shall elect whether to receive allocations through the weighted student formula;
- (2) Any election by new century charter schools and new century conversion charter schools to receive allocations, or not to receive allocations, through the weighted student formula shall be made by September 1 of each even-numbered year, and such election shall apply to the fiscal biennium beginning July 1 of the following year; and
- (3) The election to receive allocations, or not to receive allocations, through the weighted student formula shall be communicated to the department through the charter school administrative office.”

SECTION 6. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, Regular Session of 2004, is amended by amending section 1 to read as follows:

“SECTION 1. Although many responsibilities are laid upon education, ultimately education must do no less than advance the endowment of human culture itself, so that each succeeding generation finds itself further along the road towards peace, social justice, and environmental sustainability in a society guided by creativity, compassion, and curiosity. This Act is a road map for a critical phase in that ongoing journey.

The legislature finds that significant changes need to be made to enhance Hawaii’s public education system to ensure the success of that journey. Although the State’s students, parents, teachers, school administrators, departmental staff, and other educational stakeholders strive to achieve excellence, their efforts will never be completely successful until various aspects of the system around them are improved.

The legislature has supported and will continue to support efforts by the department of education to improve Hawaii's schools as a means of enhancing the academic achievement, safety and well being, and civic commitment of students, to meet the evolving needs of today's communities.

The coordinated package of initiatives in this Act aims to implement comprehensive education reform in Hawaii's public schools and shall be known as the "Reinventing Education Act of 2004." Its main elements include:

- (1) Establishing a weighted student formula;
- (2) Providing additional information technology;
- (3) Empowering principals through a Hawaii principals academy and other means;
- (4) Strengthening community involvement through school community councils and parent-community networking centers;
- (5) Providing more mathematics textbooks;
- (6) Lowering class size in kindergarten, grade one, and grade two;
- (7) Providing full-time, year-round, high school student activity coordinators;
- (8) Providing support for students who need additional help to succeed in school;
- (9) Establishing a national board certification incentive program for teachers;
- (10) Enhancing teacher education;
- (11) Reducing the bureaucracy that hampers the effectiveness of the department of education;
- (12) Improving the educational accountability system; and
- (13) Requiring [the] board of education members to hold community meetings in their districts.

Research shows that student performance is significantly higher in smaller schools. While establishing smaller schools throughout the State is not financially feasible, some schools have taken it upon themselves to create smaller and more manageable learning communities within their schools. Research also strongly supports the need for early childhood education and the establishment of a coherent system that spans all levels of education. The department of education, teamed with the University of Hawaii and Good Beginnings Alliance to create a vision for such a system, which was presented in 2002, [and] is now being implemented.

Despite these efforts, more needs to be done. Currently, public school principals are faced with a nearly impossible task, as they are asked to attend to every detail of operating their schools without enough institutional support or discretion to expend funds. While some support and additional school leadership is provided by the school/community-based management (SCBM) system at many schools throughout the State, SCBM plays a far more limited role at some locations, and has not been implemented at all at others.

Recently, departmental leadership was decentralized through the creation of the complex area system, including the hiring of complex area superintendents. While replacing the old district system with this new structure was an important first step, further changes need to be made to allow meaningful authority to exist as close to the schools as possible. The complex area structure will serve as an excellent base upon which to build these continued reforms. It is the legislature's intent to place a far greater number of decisions, and a much higher percentage of moneys, directly in the hands of individual schools and their leaders.

Another area of improvement necessary to promote excellence in learning is the method by which moneys are allocated to individual schools. Hawaii currently receives high marks nationally for funding equity, as being organized as a single unified system enables the State to fairly disburse moneys to schools. In other states,

local revenue sources such as property taxes account for a significant portion of school and district funding, resulting in massive financial disparities between schools in more and less affluent areas.

Although the State avoids this particular pitfall, further improvements can be made to ensure that moneys go to the schools that truly have the greatest need, and to place more moneys at the discretion of individual schools. While the current funding system takes into account certain criteria when allocating moneys to schools, it does not comprehensively address the fact that some students are more costly to educate than others. For example, students with special needs, such as those with limited proficiency in English, or who have physical, psychological, or other impediments to learning, are more expensive to teach than students who are not faced with these barriers.

One method that can be used to address these funding issues is a weighted student formula. Under such a system, moneys are allocated to schools based on a system of weighted characteristics that apply to every student in the public schools.

Under a weighted student formula there are several advantages. Among other things:

- (1) The relative cost of educating students can be much more accurately assessed, based upon the unique learning needs of each student;
- (2) Funds follow students to whichever school they attend; and
- (3) The budget process becomes more transparent as it is based on dollars, not staff positions.

However, establishing a weighted student formula cannot be effective in a vacuum. Other reform measures must be implemented as well. Principals will be empowered to act as the educational leaders of their schools, with more authority relating to budgeting, and more flexibility to expend funds. With these expanded powers, principals will be held accountable for their performance through a system that includes rewards, assistance, and sanctions. Principals will also need more training and support if they are required to take on additional duties, and are expected to advance student success. Furthermore, community involvement and support of schools will need to be enhanced if schools are to work effectively.

The department of education is also faced with significant impediments that will likely reduce its ability to effectively implement the weighted student formula. With educational responsibilities spread throughout numerous state agencies, there are various roadblocks to progress that could prevent the department of education and individual schools from successfully performing their duties and effectively using a new funding system.

The legislature finds that a comprehensive effort addressing all of these issues is required for Hawaii's public schools to maximize student achievement. Accordingly, the purpose of this Act is to enhance educational outcomes in Hawaii's public schools by:

- (1) Implementing the weighted student formula by:
 - (A) Requiring the department of education to provide supplementary allocations to those schools whose budgets are adversely affected by the weighted student formula for no more than three years beginning with the 2006-2007 school year;
 - (B) Establishing a committee on weights within the department of education to determine the unit value of student weights and recommend a weighted student formula to the board of education at least annually, and appropriating \$10,000 to support the operation of the committee;
 - (C) Requiring the department of education to adopt a weighted student formula in allocating funds to [a##] public schools[;

- ~~excluding new century charter schools and new century conversion charter schools];~~
- (2) Appropriating \$2,000,000 to the department of education to facilitate field support, security, and privacy for the telecommunications network, and training regarding information technology infrastructure used to enhance accountability, compliance with the federal No Child Left Behind Act of 2001, and implementation of school reform including the weighted student formula;
 - (3) Supporting and empowering principals by:
 - (A) Requiring the department of education, with the invited participation of the exclusive bargaining agent of educational officers of the department of education, to propose salary schedules and other terms and conditions of employment of principals and vice principals based upon a twelve-month term of service, and report findings back to the ~~[Legislature]~~ legislature no later than twenty days prior to the regular session of 2005;
 - (B) Requiring the board of education to classify all educational officer positions of the department of education to adopt two separate classification/compensation plans for educational officers~~[- one]~~:
 - (i) One for principals and vice principals (based on the general pattern of a school administrator's career development and associated school administrator's qualification requirements); and ~~[one]~~
 - (ii) One for all other educational officers (reflective of the career development pattern and qualification requirements for the respective professional field of expertise), and including classification appeals procedures for both; ~~[and]~~
 - (C) Convening a working group to create a plan for the implementation of performance contracts for principals;
 - (D) Establishing a Hawaii principals academy to support and train complex area superintendents, principals, and prospective principals, and appropriating \$500,000 to operate the academy;
 - (E) Clarifying the authority and responsibility of principals;
 - (F) Appropriating \$183,780 to operate the department of education's administrator certification for excellence (ACE) program; and
 - (G) Appropriating \$400,000 to compensate principals recalled to work by the department, outside of their regular term of service, for professional development and any other activities that may enhance their effectiveness as leaders of their schools;
 - (4) Enhancing community involvement in schools by:
 - (A) Appropriating \$350,000 for training and other activities needed to facilitate the transition from the current SCBM system into a mandatory school community council system to be implemented at each public school, excluding new century charter schools and new century conversion charter schools;
 - (B) Clearly articulating the balance and reciprocity of powers and responsibilities between the principal and school community council; ~~and~~
 - (C) Appropriating \$1,743,900 to support and enhance ~~[a proven means of improving parental and community involvement in schools;]~~ parent-community networking centers;
 - (5) Directly, concretely supporting the academic achievement and holistic development of students by:

- (A) Appropriating \$2,500,000 for mathematics textbooks and other mathematics learning materials in schools[-]; provided that mathematics curriculum is aligned within the school complex;
- (B) Appropriating \$2,143,350 to reduce class size in kindergarten, grade one, and grade two by hiring seventy-five elementary school teachers;
- (C) Appropriating \$460,000 for full-time, year-round, high school student activity coordinators; and
- (D) Appropriating \$100,000 for programs that support parents in working with students who need additional help to succeed in school; provided the programs have measurable outcomes;
- (6) Directly, concretely supporting teachers by:
 - (A) Establishing a national board certification incentive program to be administered by the Hawaii teacher standards board to continue comparable efforts initiated under a memorandum of understanding between the department of education and Hawaii teacher standards board which expires on June 30, 2005, and appropriating \$480,000 [~~funding~~] to execute the memorandum of understanding during fiscal year 2004-2005;
 - (B) Appropriating \$92,000 for the administration of the Hawaii teacher standards board; and
 - (C) Increasing the pool of qualified teachers and administrators by appropriating \$500,000 to fund seven teacher education positions and one education administration faculty position at the college of education of the University of Hawaii;
- (7) Reducing bureaucracy that hampers the effectiveness of the department of education by:
 - (A) Requiring the department of education to convene an interagency working group to address systemic impediments to the efficient management and operation of schools;
 - (B) Transferring certain key functions from various state agencies to the department of education; and
 - (C) Requiring the board of education to adopt a single school calendar for all public schools to apply beginning with the 2006-2007 school year;
- (8) Enhancing educational accountability by:
 - (A) Requiring academic achievement, safety and well being, and civic responsibility of individual students to be assessed and tracked;
 - (B) Expanding the accountability provision to include fiscal accountability;
 - (C) Including complex area superintendents and principals in the accountability system;
 - (D) Requiring clear, easily understandable report cards on key performance indicators for schools, school complexes, and the public school system; and
 - (E) Requiring the board of education to hold community meetings in each school district;
- (9) Appropriating \$400,000 for the piloting of school community councils and development of academic and financial plans at selected schools prior to the statewide implementation of the weighted student formula; and

- (10) Requiring the department of education to submit findings and recommendations to the legislature prior to the 2005 regular session relating to the implementation of this Act.”

SECTION 7. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, Regular Session of 2004, is amended by amending section 4 to read as follows:

“SECTION 4. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§302A- Weighted student formula.** Based upon recommendations from the committee on weights, the board of education, not less than annually, shall adopt a weighted student formula for the allocation of moneys to public schools[~~excluding new century charter schools and new century conversion charter schools,~~] which takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools[~~excluding new century charter schools and new century conversion charter schools~~]. Principals shall expend moneys provided to the principals’ schools. This section shall only apply to new century charter schools and new century conversion charter schools for fiscal years in which the new century charter schools and new century conversion charter schools elect pursuant to section 302A- to receive allocations according to the weighted student formula.””

SECTION 8. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, Regular Session of 2004, is amended by amending section 6 to read as follows:

“SECTION 6. [Section] Chapter 302A,² Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Weighted student formula” means a formula for allocating operating moneys to individual public schools that includes a system of weighted characteristics affecting the relative cost of educating each student attending a public school[~~excluding new century charter schools and new century conversion charter schools~~].””

SECTION 9. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, Regular Session of 2004, is amended by amending section 14 to read as follows:

“SECTION 14. The superintendent of education shall select and convene a working group to create a plan for performance contracts for principals to be implemented beginning with the 2006-2007 school year. The working group shall include:

- (1) The superintendent of education;
- (2) Representatives of complex area superintendents;
- (3) Representatives of school principals; and
- (4) Representatives of any other agency, organization, or group as deemed appropriate by the superintendent of education.

The superintendent shall request the exclusive representative for collective bargaining unit 6 to participate in the working group.

The working group shall:

- (1) Establish appropriate performance criteria ~~[for]~~ which shall be used in individual performance contracts for principals [are to be evaluated under performance contracts], including:
 - (A) Core criteria to be incorporated into performance contracts statewide; and
 - (B) Criteria that may be used at the discretion of individual schools;
- (2) Determine appropriate performance benchmarks, or methods of devising performance benchmarks, that may be used to assess principal performance relative to expected standards[-]; provided that such performance benchmarks, at a minimum, shall include those elements related to principals in the educational accountability system;
- (3) Determine appropriate rewards, assistance, and sanctions to be included or considered for inclusion in performance contracts; and
- (4) Address any other issues necessary for the implementation of performance contracts.

The department of education shall submit findings, including proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2005.”

SECTION 10. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, Regular Session of 2004, is amended by amending section 16 to read as follows:

“SECTION 16. Section 302A-1103, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1103 Principal; authority and responsibility. The role of the principal shall include but not be limited to overseeing the day-to-day management of the school, the primary function of which is to develop and deliver instructional services to students in accordance with statewide educational policy and to enable students to meet or exceed statewide academic standards. The principal shall:

- (1) Ensure that the curriculum facilitates the achievement of the statewide student performance standards adopted for the public school system;
- (2) Develop and present to the school community council for its review and approval, academic and financial plans relating to the school;
- ~~[(2) Maintain and exercise]~~ (3) Exercise authority over the implementation of the budget, policies, and operations of the school; and
- ~~[(3)]~~ (4) Collaborate with other principals in the principal’s school complex to ensure that:
 - (A) Logical, sequential curricula are adopted within the school complex;
 - (B) Best practices are shared among and implemented by schools within the school complex;
 - (C) The goals and objectives of the school complex are being met;
 - (D) The use of school complex-based personnel and contractors who divide their time between more than one school in a school complex is coordinated to maximize efficiency; and
 - (E) The passage of students through the continuum of grades is coordinated in a manner consistent with section 302A-1004.””

SECTION 11. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, Regular Session of 2004, is amended by amending section 25 to read as follows:

“SECTION 25. Section 302A-1124, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1124 Mandate to initiate school community councils.** (a) The department, through the board and its superintendent, shall establish a school community council system under which each public school, excluding new century charter schools and new century conversion charter schools, shall create and maintain a school community council. Each school community council shall:

- (1) ~~Participate in the development of, and recommend for approval by the complex area superintendent, the school's annual:~~

- (A) ~~Academic plan; and~~

- (B) ~~Financial plan;]~~

Review and evaluate the school's academic plan and financial plan, and either recommend revisions of the plans to the principal, or recommend the plans for approval by the complex area superintendent;

- (2) Ensure that the school's academic and financial plans are aligned with the educational accountability system under section 302A-1004;
- (3) Participate in principal selection and evaluation, and transmit any such evaluations to the complex area superintendent; and
- (4) Provide collaborative opportunities for input and consultation.

(b) School community councils shall be exempt from the requirements of chapters 91 and 92. The school community councils shall:

- (1) Make available the notices and agendas of public meetings:

- (A) At a publicly accessible area in the school's administrative office so as to be available for review during regular business hours; and

- (B) On the school's Internet web site, not less than six calendar days prior to the public meeting, unless a waiver is granted by the superintendent in the case of an emergency; and

- (2) Make available the minutes from public meetings on a timely basis in:

- (A) The school's administrative office so as to be available for review during regular business hours; and

- (B) On the school's Internet web site.

(c) Complex area superintendents may require ~~[a school community council to revise its school]~~ revisions to a school's academic and financial plans if the plans are in violation of law or conflict with statewide educational policies and standards[-], or are otherwise in the best interests of the school.

(d) The superintendent of education may recommend to the board of education dissolution of a school community council and establish an interim school community council if the school community council engages in any act or omission that would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct. The superintendent may recommend to the board the removal of any member of a school community council. The superintendent shall appoint or facilitate the creation of an interim school community council at any school that has not established a council or has had its council dissolved. In appointing or facilitating the creation of an interim school community council at any school that has had its council dissolved, the superintendent may appoint individuals who were previously members of the council.

(e) Unless otherwise specified, each school community council shall establish policies governing the council's composition, election, staggered terms of office for members, operation, and vacancies; provided that:

- (1) The number of school personnel in any school community council shall be equal to the number of primary stakeholders on the school community council;
- (2) At the elementary and middle school levels, each school community council shall be composed of the principal and at least one member representing each of the following groups:
 - (A) Parents elected by ballots distributed among and collected from the parents of the school's students;
 - (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from parents of the school's students; and
 - (E) Student representatives selected by the student council of the school; and
- (3) At the high school level, each school community council shall be composed of the principal and at least one member representing each of the following groups:
 - (A) Parents elected by ballots distributed among and collected from parents of the school's students;
 - (B) Teachers elected by ballots distributed among and collected from teachers of the school;
 - (C) Noncertificated school personnel elected by ballots distributed among and collected from noncertificated personnel of the school;
 - (D) Community representatives elected by ballots distributed among and collected from the parents of the school's students; and
 - (E) Student representatives selected by the student council of the school.

For the purposes of this subsection, "primary stakeholders" means students, parents, and community members.

- (f) School community councils shall elect officers, including:
 - (1) A chairperson;
 - (2) A vice-chairperson;
 - (3) A secretary; and
 - (4) Other officers as needed to perform stated duties in support of the work of the council.

(g) The principal shall have the authority to set aside any decision made by the school community council if the principal determines it to be in the best interests of the school[.]; provided that the principal notifies the school community council. If the school community council opposes a decision of the principal, an appeal shall first be brought to the complex area superintendent for resolution and, if necessary, to the superintendent and, finally, to the board of education. ~~The principal shall not set aside decisions made by the school community council to recommend annual academic and financial plans for approval by the complex area superintendent.]~~

(h) Complex area superintendents shall assist the school community councils and principals within their respective complex areas in:

- (1) Obtaining the support and services of the department; and
- (2) Ensuring the progress and success of the school's academic and financial plan."''

SECTION 12. The Act that resulted from the enactment of S.B. No. 3238, S.D. 2, H.D. 2, C.D. 1¹, Regular Session of 2004, is amended by amending section 59 to read as follows:

“SECTION 59. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000[;] or so much thereof as may be necessary for fiscal year 2004-2005[;] for the piloting of school community councils and development of academic and financial plans at ~~[selected public schools prior to the statewide implementation of the weighted student formula.]~~ least at one school in each complex area. The pilot program shall begin no later than January 1, 2005.”

SECTION 13. The department of education shall submit to the legislature no later than twenty days prior to the convening of the regular session of 2005 a report detailing the programs and functions that would need to be placed under the control of individual schools to achieve certain benchmark figures in enabling principals to expend an increased percentage of the appropriations for total department of education budget, excluding debt service and capital improvement programs. The report shall include:

- (1) A list of functions and programs for which moneys would be expended by school principals at each of:
 - (B) Eighty per cent; and
 - (C) Ninety per cent
 of the appropriations for the total department of education budget, excluding debt service and capital improvement programs;
- (2) A description of required department infrastructure and system support, including any buyback programs for services, to achieve the benchmark figures in paragraph (1); and
- (3) A description of any other requirements foreseen by the department to be necessary to achieve the benchmark figures in paragraph (1).

PART III

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 15. This Act shall take effect upon its approval; provided that sections 2 and 3 shall take effect on July 1, 2004.

(Approved July 13, 2004.)

Notes

1. Act 51.
2. Should be §302A-101.
3. Edited pursuant to HRS §23G-16.5.

ACT 222

S.B. NO. 2200

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 302A-401, Hawaii Revised Statutes, is amended to read as follows:

“§302A-401 Running start program. (a) There is created in the department[,] the running start program to permit eligible students to enroll in any qualified course offered by the University of Hawaii system.

(b) For the purposes of this section:

“Eligible student” means a high school student in the eleventh or twelfth grade who:

- (1) Has passed a standardized test administered by the college that demonstrates the student’s ability to succeed at the college level;
- (2) Is under the age of twenty-one as of September 1 of the school year in which the college course is taken; and
- (3) Has other qualifications deemed appropriate by the department of education or the University of Hawaii; provided that subsequent qualifications do not restrict any student from taking the standardized test.

“Qualified course” means any vocational or academic course offered by the University of Hawaii system that also applies to the department’s graduation requirements or is otherwise permitted by department rule or policy.

(c) All course credits successfully completed pursuant to this section that would otherwise be transferable but for a student’s grade level, shall be transferable to any University of Hawaii system degree granting institution; provided that the student is admitted to the campus where the credit is transferred.

(d) College courses successfully completed under this section shall also satisfy the department’s graduation requirements as determined by the department pursuant to rule.

(e) This section shall not preclude the department and the University of Hawaii from establishing programs by mutual agreement that permit high school students to enroll in college courses.

(f) Every student enrolled in a college course pursuant to this section shall remit appropriate tuition and fees to the college for every college course.

~~[(g) The department shall adopt rules pursuant to chapter 91 to effectuate this section.]”~~

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 13, 2004.)

ACT 223

H.B. NO. 2009

A Bill for an Act Making an Appropriation for Agricultural Research and Market Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that research and market development are critical for the continued growth of Hawaii’s agricultural industry. To provide the necessary support for the transition of Hawaii’s agricultural industry from once vast pineapple and sugar plantations to diversified agriculture, more resources must be directed toward agricultural research and market development.

Agricultural research is the basic foundation for Hawaii’s agricultural industry. The Hawaii Agriculture Research Center and the college of tropical agriculture and human resources at the University of Hawaii (CTAHR) are important research organizations that assist the entire agricultural community. Although funding for

agricultural research has declined dramatically in recent years, it is critical that funding be continued to keep Hawaii's agricultural industry competitive in today's global market.

Market development is another key component in expanding the opportunities for Hawaii's agribusiness. Given Hawaii's small size and isolated location, considerable effort and funds are needed to develop new markets, expand existing markets, and support new and existing crops.

The legislature finds that the Hawaii Farm Bureau Federation is a nonprofit organization that serves the agricultural industry statewide. The Hawaii Farm Bureau Federation has frequently partnered with institutions like the Hawaii Agriculture Research Center, CTAHR, and the department of agriculture on many research and market development projects. The Hawaii Farm Bureau Federation exemplifies a strong commitment to agriculture and can assure that agricultural research and marketing meet the needs of the industry.

The legislature also finds that CTAHR is committed to the preparation of students and all citizens of Hawaii for life in the global community through research and educational programs supporting tropical agricultural systems that foster viable communities, a diversified economy, and a healthy environment.

Hawaii must diversify its economic base beyond a reliance on tourism. A revived and revitalized state agricultural industry promises not only to diversify Hawaii's economy but also to sustain and stabilize Hawaii's food supply and protect the open space and lifestyle that Hawaii residents and visitors value.

Hawaii's agriculture and value-added products contribute \$2,400,000,000 to the State's economy and employ more than thirty-eight thousand people. During the past twenty years, the value of diversified agriculture in Hawaii more than doubled, reaching a record \$370,900,000 in farm-level revenues in 2002. The prime agricultural lands released from sugar and pineapple production present a rare window of opportunity to further agricultural development. Currently, about one hundred thousand acres of former sugar and pineapple land lie fallow, awaiting economically viable agribusinesses. If all this land could be put to productive use in successful agricultural ventures, an additional \$1,700,000,000 to \$4,400,000,000 could be added to the State's economy.

Also during the past two decades, the Hawaii beef cattle industry has experienced structural shifts that have led to a significant decline in the market share of locally produced beef, from an estimated thirty per cent to less than ten per cent, and to a thirty-seven per cent decrease in the farm value of cattle and calf sales. At present, the majority of calves born in the state are exported to various markets in the mainland United States and Canada. Keeping fifty thousand of these calves in Hawaii could potentially increase the farm gate value of the beef cattle industry by \$25,000,000. Both forage-based and feedlot-finished beef hold great promise as import substitution products that are grown in Hawaii.

The legislature finds that for Hawaii agriculture to take advantage of current opportunities, it must generate high-quality, market-driven products that offset Hawaii's high costs of land, labor, water, and transportation. This strategy requires that agriculture have access to state-of-the-art research and outreach programs.

CTAHR is engaged in several areas of research and outreach that have already contributed to the resurgence of agriculture in Hawaii. Among CTAHR's contributions to the State's agricultural industry are:

- (1) Identification and development of high-value plant- and animal-based food and fiber products to help Hawaii stay competitive in a global market;
- (2) Development of effective and environmentally sound pest, disease, nutrient, and resource management systems; and
- (3) Research that advances agricultural biotechnology, an industry that has the potential to bring billions of dollars to the State's economy.

The legislature further finds that work in these areas must be expanded to develop and promote high-value products, including:

- (1) New and improved plant varieties that resist disease and environmental stress and tolerate pesticides;
- (2) Plants and plant cell culture systems that produce high-value chemicals, fragrances, vaccines, or specific nutrients;
- (3) Biotechnological innovations that permit rapid analysis to screen for valuable molecular products, evaluate environmental and process chemistry, and identify pest species; and
- (4) Resource- and herd-management approaches and market research that maximize the yield and profitability of, and expand demand for, Hawaii-finished beef.

The purpose of this Act is to provide funding for the Hawaii Farm Bureau Federation to conduct agricultural research and market development and to appropriate funds to CTAHR for research programs to further its mission and actively help Hawaii diversify its economy.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the Hawaii Farm Bureau Federation to pursue efforts in agricultural research and market development.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the research programs of the college of tropical agriculture and human resources at the University of Hawaii to further its mission and actively help Hawaii diversify its economy; provided that the funds shall be added to the base budget of the University of Hawaii.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 3.¹ This Act shall take effect on July 1, 2004.

(Approved July 13, 2004.)

Note

1. So in original.

ACT 224

S.B. NO. 1238

A Bill for an Act Relating to Mental Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow individuals to make known their preferences for their mental health care and treatment when they are able so that these preferences can guide care and treatment if the individual later loses the capacity to make such decisions due to a mental illness. This Act also allows individuals to appoint an agent and alternate agents to make mental health care decisions on behalf of the individual if the individual later loses the capacity to make such decisions due to a mental illness.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
ADVANCE MENTAL HEALTH CARE DIRECTIVES**

§ -1 Purpose. The State finds that all competent persons have the fundamental right to control decisions relating to their own mental health care, including the decision to accept or refuse all types of mental health treatment. The rights of individuals shall be respected when they have lost the capacity to participate actively in decisions regarding themselves or their mental health care and treatment. The laws of the State of Hawaii shall recognize the right of persons eighteen years of age or older and emancipated minors to make a written advance mental health care directive expressing their preferences and instructions regarding mental health care and treatment, including the consent to, or refusal of, that care and treatment, and to designate an agent or alternate agents to make mental health care decisions on behalf of the individual, when that individual later loses the capacity to make those decisions due to a mental illness.

§ -2 Definitions. Whenever used in this chapter, unless the context otherwise requires:

“Advance mental health care directive” means a written document expressing preferences, instructions, or a power of attorney for mental health treatment.

“Agent” means a competent adult designated in a power of attorney contained in an advance mental health care directive to make a mental health care decision for the individual granting the power and includes all designated alternate agents.

“Best interests” means that the benefits to the principal resulting from a mental health treatment outweigh the burdens to the principal resulting from that treatment and includes:

- (1) The effect of the mental health treatment on the physical, mental, emotional, and cognitive functions of the principal;
- (2) The degree of physical and mental pain or discomfort caused to the principal by the mental health treatment or the withholding or withdrawal of that treatment;
- (3) The degree to which the principal’s medical condition, the mental health treatment, or the withholding or withdrawal of mental health treatment, results in a severe and continuing impairment;
- (4) The effect of the mental health treatment on the life expectancy of the principal;
- (5) The prognosis of the principal for recovery or remission, with and without the mental health treatment;
- (6) The risks, side effects, and benefits of the mental health treatment or the withholding of mental health treatment; and
- (7) The religious beliefs and basic values of the principal receiving mental health treatment known to the agent, to the extent that these may assist the agent in determining benefits and burdens.

“Capacity” means a principal’s ability to understand the significant benefits, risks, and alternatives to proposed mental health care or treatment and to make and communicate a mental health care decision.

“Competent adult” means an individual eighteen years of age or older who has the capacity to understand the significant benefits, risks, and alternatives to proposed mental health care or treatment and to make and communicate mental health care decisions.

“Emancipated minor” means an individual less than eighteen years of age who is deemed to be emancipated pursuant to section 577-25.

“Guardian” means a judicially appointed guardian or conservator having authority to make a mental health care decision for a principal, appointed under part 3 of article V of chapter 560.

“Health care institution” means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

“Health care provider” means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

“Mental health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a principal’s mental condition, including:

- (1) Selection and discharge of health care providers and institutions;
- (2) Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication; and
- (3) Approval or disapproval of electroconvulsive treatment.

“Mental health care decision” means a decision made by a principal or the principal’s agent or guardian regarding the principal’s mental health care or mental health treatment.

“Mental health treatment” means any form of treatment used for the treatment of mental illness, including but not limited to electroconvulsive treatment, the use of psychotropic medication, and admission to and retention in a health care facility for the care or treatment of mental illness.

“Physician” means an individual authorized to practice medicine under chapter 453 or osteopathy under chapter 460.

“Power of attorney” means the designation of an agent to make mental health care decisions for the principal granting the power.

“Primary physician” means a physician designated by a principal or the principal’s agent or guardian to have primary responsibility for the principal’s health care, including mental health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

“Principal” means a competent adult or emancipated minor who has executed a written advance mental health care directive or power of attorney for mental health care.

“Psychologist” means an individual authorized to practice psychology under chapter 465.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

“Supervising health care provider” means the primary physician or the physician’s designee, or the health care provider or the provider’s designee who has undertaken primary responsibility for a principal’s health care, that includes mental health care.

§ -3 Advance mental health care directive; designation of agent. (a) A competent adult or emancipated minor may make a written advance mental health care directive declaring preferences or instructions regarding mental health treatment. The preferences or instructions may include consent to, or refusal of, mental health treatment. An advance mental health care directive may be a part of, or combined with, a written advance health care directive under chapter 327E.

(b) A principal, in a power of attorney contained in the written advance mental health care directive, may designate a competent adult to act as an agent to

make any and all mental health care and mental health treatment decisions on behalf of the principal when the principal lacks capacity, unless otherwise specified or limited by the advance mental health care directive. A principal, in a power of attorney contained in the written advance mental health care directive, may also designate competent adults to act as alternate agents, in the order so designated, if the original agent is unable or unwilling to act.

(c) A written advance mental health care directive may include the principal's nomination of a guardian of the person. The court shall make its appointment of a guardian of the person in accordance with the principal's most recent nomination in a valid and unrevoked advance mental health care directive, except for good cause shown.

(d) No individual shall be required to execute or refrain from executing an advance mental health care directive or power of attorney as a condition for insurance coverage, receiving mental or physical health services, receiving privileges while in a health care institution, or as a condition of discharge from a health care institution.

(e) An advance mental health care directive is valid and effective only if it is in writing, contains the date of its execution, is signed by the principal, and is witnessed in one of the following methods:

- (1) Signed by at least two competent adults, except those as provided in subsection (f), each of whom shall attest that the principal is known to them, signed the advance mental health care directive in their presence, and appears to be of sound mind and not under duress, fraud, or undue influence; or
- (2) Acknowledged before a notary public within this State.

(f) None of the following may serve as a witness to the signing of an advance mental health care directive:

- (1) A health care provider, supervising health care provider, or an employee or relative of a health care provider or supervising health care provider;
- (2) An owner, operator, or employee of a health care provider or health care institution in which the principal is a patient or resident;
- (3) A person related to the principal by blood, marriage, or adoption; or
- (4) The agent or alternate agents.

(g) None of the following may serve as an agent or alternate agent under a designation in a power of attorney contained in an advance mental health care directive:

- (1) A health care provider, supervising health care provider, or an employee of a health care provider or supervising health care provider, unless that person is related to the principal by blood, marriage, or adoption; or
- (2) An owner, operator, or employee of a health care provider or health care institution in which the principal is a patient or resident, unless that person is related to the principal by blood, marriage, or adoption.

(h) An advance mental health care directive and power of attorney becomes effective when it is delivered to a health care provider, supervising health care provider, or health care institution and remains effective until revoked.

(i) An advance mental health care directive executed prior to the effective date of this chapter shall be valid for the purposes of this chapter if it complies substantially with this chapter or if it was executed in compliance with the laws of the state where it was executed.

§ -4 Revocation of advance mental health care directive. (a) A principal who has capacity at the time may revoke all or part of an advance mental health care

directive, including the designation of an agent or alternate agents, at any time and in any manner that communicates intent to revoke. The principal shall give notice of the revocation to a health care provider, supervising health care provider, health care institution, agent, or guardian.

(b) A health care provider, agent, or guardian who is informed of a revocation shall promptly communicate the fact and extent of the revocation to the supervising health care provider and to any health care institution in which the principal is a patient or resident.

(c) A revocation is effective when notice of the revocation is received by the supervising health care provider or health care institution. The supervising health care provider or health care institution shall promptly record the fact and extent of the revocation, including the date and time of the revocation, in the principal's medical record.

(d) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent, unless otherwise specified in the decree or in the advance mental health care directive.

(e) An advance mental health care directive that conflicts with an earlier advance mental health care directive revokes the earlier directive to the extent of the conflict.

§ -5 Authority and duty of agent; limitations on liability. (a) The authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination made under section -7 that the principal has recovered capacity, unless otherwise specified in the advance mental health care directive.

(b) An agent has the authority to make any and all mental health care decisions on behalf of the principal while the principal lacks capacity, unless otherwise specified or limited in the advance mental health care directive.

(c) In exercising authority, an agent has a duty to act consistently with the provisions of the advance mental health care directive. An agent shall make all mental health care decisions in accordance with the principal's preferences or instructions expressed in the advance mental health care directive, if any, and the principal's other wishes to the extent known to the agent. If the principal's preferences, instructions, and wishes are not expressed or known, the agent shall make the decision in accordance with the agent's good faith determination of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.

(d) An agent has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment, unless limited by the advance mental health care directive or any federal law. This right of access and disclosure does not waive any evidentiary privilege.

(e) A mental health care decision made by an agent for a principal shall be effective without judicial approval.

(f) An agent is not, solely as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

(g) An agent whose decisions regarding the principal are made in good faith, pursuant to the provisions of the advance mental health care directive, shall not be subject to criminal prosecution, civil liability, or professional disciplinary action with respect to those decisions.

§ -6 Withdrawal of agent; rescission of withdrawal. (a) An agent may withdraw by giving notice to the principal, if the principal has capacity at the time. If the principal lacks capacity, the agent may withdraw by giving notice to the

supervising health care provider or health care institution. The supervising health care provider or health care institution shall promptly record the withdrawal, including the date and time of the withdrawal, in the principal's medical record.

(b) An individual who has withdrawn under subsection (a) may rescind the withdrawal by executing and dating a written acceptance of the designation as agent after the date of the withdrawal. An individual who rescinds a withdrawal shall give notice and a copy of the written acceptance to the principal, if the principal has capacity at the time. If the principal lacks capacity, the individual who rescinds a withdrawal shall give notice and a copy of the written acceptance to the supervising health care provider or health care institution. The supervising health care provider or health care institution shall promptly record the rescission, including the date and time of the rescission, in the principal's medical record and make the written acceptance a part of the principal's medical record.

§ -7 Presumption of capacity; determination of lack of capacity; recovery of capacity. (a) A principal is presumed to have capacity to make mental health care decisions and to execute or revoke an advance mental health care directive or power of attorney designating an agent. Even if the principal has an advance mental health care directive, the principal has the right to make decisions regarding mental health care or mental health treatment, so long as the principal has capacity.

(b) The fact that a principal has executed an advance mental health care directive shall not create a presumption, nor constitute evidence or an indication, that the principal is mentally incompetent or lacks capacity.

(c) This chapter shall not create a presumption concerning the intention of an individual who has not executed or who has revoked an advance mental health care directive or power of attorney.

(d) For the purposes of this chapter, the determination that a principal lacks capacity shall be made by the supervising health care provider who is a physician and one other physician or licensed psychologist after both have conducted an examination of the principal. Upon examination and a joint determination that the principal lacks capacity, the supervising health care provider shall promptly note the determination in the principal's medical record, including the facts and professional opinions that form the basis of the determination, and shall promptly notify the agent that the principal lacks capacity and that the advance mental health care directive has been invoked.

(e) The determination that a principal has recovered capacity shall be made by the supervising health care provider who is a physician. The supervising health care provider shall promptly note the recovery of capacity in the principal's medical record, and shall promptly notify the agent that the principal has recovered capacity.

§ -8 Limitations on applicability of advance mental health care directive. (a) A supervising health care provider, health care provider, or health care institution may subject the principal to mental health treatment in a manner contrary to the principal's preferences and instructions as expressed in an advance mental health care directive only:

- (1) When a court order under part 3 of article V of chapter 560 contradicts the principal's preferences and instructions as expressed in the advance mental health care directive; or
- (2) In cases of emergency when the principal poses an imminent threat to the safety of self or others.

(b) Neither an advance mental health care directive nor this chapter limits any authority either to take an individual into custody or to admit, retain, or treat an individual in a health care institution pursuant to part IV of chapter 334.

§ -9 Decisions by guardian. (a) A duly appointed guardian of the person of the principal shall comply with the principal's preferences or instructions expressed in the advance mental health care directive and shall not revoke the principal's advance mental health care directive, unless otherwise expressly authorized by a court of competent jurisdiction.

(b) Absent a court order to the contrary, a mental health care decision of an agent takes precedence over that of a guardian.

(c) A mental health care decision made by a guardian for the principal is effective without judicial approval, unless contrary to the principal's preferences or instructions expressed in the advance mental health care directive.

§ -10 Obligations of health care providers; limitations on liability. (a) The supervising health care provider, health care provider, or health care institution shall continue to obtain the principal's informed consent to all mental health treatment decisions when the principal has capacity to provide informed consent or refusal. Unless the principal is deemed to lack capacity pursuant to this chapter, the instructions or decisions of the principal at the time of mental health treatment shall supersede the preferences or instructions expressed in the principal's advance mental health care directive.

(b) Upon being presented with an advance mental health care directive, the supervising health care provider or health care institution shall make the advance mental health care directive a part of the principal's medical record. When acting under the authority of an advance mental health care directive, the supervising health care provider, health care provider, or health care institution shall comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. In the event that one or more parts of the advance mental health care directive cannot be followed, all other parts of the advance mental health care directive shall nonetheless be followed.

(c) A supervising health care provider, health care provider, or health care institution may consider an advance mental health care directive to be valid and rely upon it in the absence of actual knowledge or notice of its revocation or invalidity.

(d) If the supervising health care provider or health care institution is unwilling at any time to comply with the advance mental health care directive or instructions of an agent, the supervising health care provider or health care institution may withdraw from providing mental health treatment consistent with the exercise of independent medical judgment. Upon withdrawal, the supervising health care provider or health care institution shall promptly notify the principal and agent and shall promptly record the notification in the principal's medical record.

(e) A physician or licensed psychologist, who in good faith determines that the principal has or lacks capacity in accordance with this chapter to decide whether to invoke an advance mental health care directive, is not subject to criminal prosecution, civil liability, or professional disciplinary action for making and acting upon that determination.

(f) In the absence of actual knowledge or notice of the revocation of an advance mental health care directive, the supervising health care provider, health care provider, or health care institution shall not be subject to criminal prosecution, civil liability, or professional disciplinary action as a result of providing or withholding mental health treatment to a principal in accordance with this chapter or the advance mental health care directive, unless the absence of actual knowledge or notice resulted from the negligence of the supervising health care provider, health care provider, or health care institution.

(g) The supervising health care provider, health care provider, or health care institution who provides or withholds mental health treatment under this chapter or the advance mental health care directive shall not incur liability arising out of a

claim to the extent that the claim is based upon lack of informed consent or authorization for the action.

(h) This section shall not be construed as affecting or limiting liability that arises out of a negligent act or omission in connection with the medical diagnosis, care, or mental health treatment of a principal under an advance mental health care directive or that arises out of any deviation from reasonable medical standards.

(i) This chapter does not authorize or require a supervising health care provider, health care provider, or health care institution to provide mental health treatment contrary to generally accepted health care standards applicable to the health care provider or institution.

§ -11 Statutory damages. (a) A supervising health care provider or health care institution that intentionally violates this chapter shall be liable to the principal or the principal's estate for damages of \$500 or actual damages resulting from the violation, whichever is greater, and reasonable attorney's fees. The damages payable in this section shall be in addition to any other damages permitted by law.

(b) A person who intentionally alters, conceals, obliterates, or falsifies an individual's advance mental health care directive or a revocation of an advance mental health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance mental health care directive, shall be subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, and reasonable attorney's fees.

§ -12 Effect of copy. A copy of an advance mental health care directive, revocation of an advance mental health care directive, or designation, revocation, withdrawal, or rescission of withdrawal of an agent has the same effect as the original.

§ -13 Judicial relief. (a) On petition of a principal, the principal's agent or guardian, a health care provider, or a health care institution involved with the principal's care, any court of competent jurisdiction may enjoin or direct a mental health care decision or order other equitable relief. A proceeding under this section shall be governed by part 3 of article V of chapter 560.

(b) Any such petition filed shall include notice of the existence of an advance mental health care directive and a copy of the directive shall be provided to the court.

§ -14 Optional form. The following sample form may be used to create an advance mental health care directive. This sample form may be duplicated, or modified to suit the needs of the person. Any written document that contains the substance of the following information may be used in an advance mental health care directive:

“ADVANCE MENTAL HEALTH CARE DIRECTIVE

Explanation

You have the right to give instructions about your own mental health care. You also have the right to name someone else to make mental health treatment decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care providers. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a list of options you may designate as part of your mental health care and treatment. For ease of designating specific instructions, mark those options in Part 1.

Part 2 of this form is a power of attorney for mental health care. This lets you name another individual as your agent to make mental health treatment decisions for you, if you become incapable of making your own decisions, or if you want someone else to make those decisions for you now, even though you are still capable of making your own decisions. You may name alternate agents to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

You may allow your agent to make all mental health treatment decisions for you. However, if you wish to limit the authority of your agent, you may specify those limitations on the form. If you do not limit the authority of your agent, your agent will have the right to:

- (1) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a mental condition;
- (2) Select or discharge health care providers and institutions;
- (3) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication; and
- (4) Approve or disapprove of electroconvulsive treatment.

Part 3 of this form lets you give specific instructions about any aspect of your mental health care and treatment. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of medication and treatment. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 4 of this form must be completed in order to activate the advance mental health care directive. After completing this form, sign and date the form at the end and have the form witnessed by one or both of the two methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any mental health care agents you have named. You should talk to the persons you have named as agents to make sure that they understand your wishes and are willing to take the responsibility.

You have the right to revoke this advance mental health care directive or replace this form at any time, unless otherwise specified in writing in the advance mental health care directive.

If you are in imminent danger of causing bodily harm to yourself or others, or have been involuntarily committed to a health care institution for mental health treatment, the advance mental health care directive will not apply.

PART 1 CHECKLIST OF MENTAL HEALTH CARE OPTIONS

NOTE TO PROVIDER: The following is a checklist of selections I have made regarding my mental health care and treatment. I include this statement to express my strong desire for you to acknowledge and abide by my rights, under state and federal laws, to influence decisions about the care I will receive.

(Declarant: Put a check mark in the left-hand column for each section you have completed.)

- _____ Designation of my mental health care agent(s).
- _____ Authority granted to my agent(s).
- _____ My preference for a court appointed guardian.
- _____ My preference of treating facility and alternatives to hospitalization.

- _____ My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized.
- _____ My preferences regarding medications.
- _____ My preferences regarding electroconvulsive therapy (ECT or shock treatment).
- _____ My preferences regarding emergency interventions (seclusion, restraint, medications).
- _____ Consent for experimental drugs or treatments.
- _____ Who should be notified immediately of my admission to a facility.
- _____ Who should be prohibited from visiting me.
- _____ My preferences for care and temporary custody of my children or pets.
- _____ Other instructions about mental health care and treatment.

PART 2

DURABLE POWER OF ATTORNEY FOR MENTAL HEALTH TREATMENT DECISIONS

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make mental health care decisions for me:

(name of individual you choose as agent)			
(address)	(city)	(state)	(zip code)
(home phone)	(work phone)		

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a mental health care decision for me, I designate as my first alternate agent:

(name of individual you choose as first alternate agent)			
(address)	(city)	(state)	(zip code)
(home phone)	(work phone)		

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a mental health care decision for me, I designate as my second alternate agent:

(name of individual you choose as second alternate agent)			
(address)	(city)	(state)	(zip code)
(home phone)	(work phone)		

(2) AGENT'S AUTHORITY: My agent is authorized to make all mental health care treatment decisions for me, including decisions to provide, withhold, or withdraw medication and treatment, and all other forms of mental health care, except as I state here:

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my supervising health care provider who is a physician and one other physician or licensed psychologist determine that I am unable to make my own mental health care decisions.

(4) AGENT'S OBLIGATION: My agent shall make mental health care decisions for me in accordance with this power of attorney for mental health care,

any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make mental health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) **NOMINATION OF GUARDIAN:** If a guardian of the person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 3

INSTRUCTIONS FOR MENTAL HEALTH CARE AND TREATMENT

If you are satisfied to allow your agent to determine what is best for you, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) My preference of treating facility and alternatives to hospitalization:

(7) My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized:

(8) My preferences regarding medications:

(9) My preferences regarding electroconvulsive therapy (ECT or shock treatment):

(10) My preferences regarding emergency interventions (seclusion, restraint, medications):

(11) Consent for experimental drugs or treatments:

(12) Who should be notified immediately of my admission to a facility:

(13) Who should be prohibited from visiting me:

(14) My preferences for care and temporary custody of my children or pets:

(15) My preferences about revocation of my advance mental health care directive during a period of incapacity:

(16) **OTHER WISHES:** (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

PART 4

WITNESSES AND SIGNATURES

(17) **EFFECT OF COPY:** A copy of this form has the same effect as the original.

(18) **SIGNATURES:** Sign and date the form here:

(date)

(sign your name)

(address)

(print your name)

(city)

(state)

(19) **WITNESSES:** This power of attorney will not be valid for making mental health care decisions unless it is either: (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the State.

AFFIRMATION OF WITNESSES

Witness 1

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

_____	_____
(date)	(sign your name)
_____	_____
(address)	(print your name)

(city) (state)	

Witness 2

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

_____	_____
(date)	(sign your name)
_____	_____
(address)	(print your name)

(city) (state)	

DECLARATION OF NOTARY

State of Hawaii

County of _____

On this _____ day of _____, in the year _____, before me, _____ (insert name of notary public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

Notary Seal

(Signature of Notary Public)"

SECTION 3. Chapter 327F, Hawaii Revised Statutes, is repealed.

SECTION 4. If House Bill No. 2297 is passed by the legislature during this Regular Session of 2004, and becomes an Act¹ whether before or after the effective

date of this Act, then, effective January 1, 2005, subsection (b) of the new section 560:5-304 in section 1 of that Act¹ shall be amended to read:

“(b) The petition shall set forth the petitioner’s name, residence, current address if different, relationship to the respondent, and interest in the appointment and, to the extent known, state or contain the following with respect to the respondent and the relief requested:

- (1) The respondent’s name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;
- (2) The name and address of the respondent’s:
 - (A) Spouse or reciprocal beneficiary, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
 - (B) Adult children or, if the respondent has none, the respondent’s parents and adult siblings, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;
- (3) The name and address of any person responsible for care or custody of the respondent;
- (4) The name and address of any legal representative of the respondent;
- (5) The name and address of any person nominated as guardian by the respondent;
- (6) The name and address of any agent appointed by the respondent under any medical directive, mental health care directive, or health care power of attorney, or, if none, any designated surrogate under section 327E-5(f);
- (7) The name and address of any proposed guardian and the reason why the proposed guardian should be selected;
- (8) The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent’s alleged incapacity;
- (9) If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and
- (10) A general statement of the respondent’s property with an estimate of its value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.”

SECTION 5. This Act shall take effect on its approval.

(Approved July 13, 2004.)

Note

1. Act 161.

ACT 225

S.B. NO. 214

A Bill for an Act Relating to Workforce Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii attracts migrating citizens from the Freely Associated States (FAS)—the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau—who seek education, health, and economic advancement for themselves and their families.

In the past few years a growing number of FAS students have been enrolling in Hawaii's public schools. These students face numerous challenges due to cultural differences, including language barriers. Certain areas of Oahu have experienced significant increases in their FAS citizen populations, particularly Waipahu, Kalihi, and the area of the Downtown-Lunalilo corridor. At Waipahu elementary school, the English as a second language (ESL) program comprises over forty per cent of the school's total student population—one of the largest ESL programs in the Leeward district. In the past three years, Marshallese students in the program have increased from twenty to one hundred and eleven, and Chuukese students, from zero to fifty-two.

These students and their families lack both the language skills and the cultural awareness necessary to adapt to, let alone excel in, their new environment. However, the State is currently ill-equipped to facilitate their assimilation into our community. The legislature finds that it is incumbent upon the community to assist these FAS citizens and decrease the likelihood that they will need to rely upon public assistance in the future. Providing FAS communities with a coordinated, culturally coherent support system that addresses education, health, and employment training, is vital to the development of an educated and productive workforce within these communities.

Assisting these communities is challenging in that, due to cultural differences and a lack of cultural awareness, members of the FAS communities are often unwilling to immediately trust and accept services from individuals and organizations within the larger community. Tapping into existing organizations with established relationships with the FAS communities, or existing methods or approaches for successfully serving the FAS communities is essential to also effectively assimilate, educate, and prepare FAS community members for gainful employment within the State.

The legislature finds that the University of Hawaii, including the community college system, is dedicated to the betterment of all the diverse ethnic populations in Hawaii. As part of the community college system, Leeward community college is sensitive to cultural awareness and education and is also dedicated to offering quality workforce programs. As such, Leeward community college is an ideal candidate for shepherding a workforce program to provide comprehensive services to the FAS communities.

SECTION 2. The purpose of this Act is to authorize Leeward community college to develop a program to provide services to FAS students as well as to the Micronesian, Marshallese, and Palauan communities at large, to ensure their success in school through cultural education and integration, language, employment, training, and legal services, that may include but are not limited to services to:

- (1) Ensure that students from the FAS are equipped with the necessary tools and skills to achieve success in school;
- (2) Develop a comprehensive multidisciplinary community-based family support system for immigrants from the FAS;
- (3) Address issues of cultural transition, through the promotion of cultural coherence and self-identification;
- (4) Provide employment and training instruction to assist with job readiness, job placement, and job retention, which shall include but not be limited to:
 - (A) Basic educational skills training;
 - (B) Occupational skills training;
 - (C) English as a second language training; and
 - (D) Mentoring;

- (5) Provide training for professional service providers that takes a holistic approach, includes problem solving, and increases awareness of and sensitivity to cultures within the FAS; and
- (6) Collect and disseminate information regarding successful methods of serving FAS immigrants in the form of written documentation, oral or video presentations, or any other appropriate medium.

The office of continuing education at Leeward community college shall oversee and administer the program through the provision of grants to community-based service providers. In administering the grants, the office of continuing education shall require as a condition to participation in the grant application process that organizations demonstrate documented prior experience and a successful track record in serving the Micronesian, Marshallese, and Palauan communities.

SECTION 3. Leeward community college shall not use general funds otherwise allocated to Leeward community college, but shall restrict the funding of the program to private contributions and federal funding sought solely for the purposes of this Act. Leeward community college may accept grants, services, and property from the federal government, foundations, private and public organizations, and any other persons or entities as may be available for fulfilling the purposes of this Act.

SECTION 4. Leeward community college shall submit a report to the legislature on the status of the development of the program, including any efforts to secure funding for the program, not less than twenty days prior to the convening of the regular session of 2005.

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

ACT 226**S.B. NO. 2716**

A Bill for an Act Relating to Education.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that statutory provisions relating to higher education and the University of Hawaii need to be examined and recodified to promote quality higher education and integrate recent higher education policy changes. Accordingly, this Act:

- (1) Establishes the higher education statutory analysis interim study group to analyze statutory provisions relating to higher education and the University of Hawaii; and
- (2) Requires the study group to suggest an improved organizational framework for these provisions, recommending statutes for consolidation, amendment, or repeal.

SECTION 2. There is established as a legislative study group exempt from chapter 92, Hawaii Revised Statutes, the higher education statutory analysis interim study group to be appointed by the speaker of the house of representatives and the president of the senate.

The study group shall specifically review and analyze chapters 304, 304D, 305, 305A, 305H, 306, 307, 308, and 309, Hawaii Revised Statutes, as well as all other statutes identified by the study group as relevant to the recodification process.

The chairs of the house committee on higher education and the senate committee on education shall serve as co-chairs of the study group. Members of the study group shall include:

- (1) The chair of the University of Hawaii board of regents or the chair's designee;
- (2) The president of the University of Hawaii or the president's designee; and
- (3) To be jointly appointed by the speaker of the house of representatives and the president of the senate:
 - (A) At least one faculty member of the University of Hawaii;
 - (B) At least one University of Hawaii student; and
 - (C) Any other individuals deemed to have appropriate expertise and experience.

The study group shall analyze statutory provisions relating to higher education and the University of Hawaii and make recommendations to:

- (1) Improve the organizational framework for relevant statutes;
- (2) Update and clarify the statutory provisions identified in paragraph (1), including suggestions for consolidation, amendment, or repeal; and
- (3) Provide consistency and clarity for draft statutory provisions.

The legislative reference bureau shall provide technical assistance to the study group, to ensure clarity and conformance with proper statutory construction.

The study group shall submit its findings and recommendations, including proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2005.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

ACT 227

H.B. NO. 1987

A Bill for an Act Relating to Motor Vehicles.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291-21.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Any person who violates this section shall be fined [~~not less than \$50 nor more than \$250 for each separate offense.~~];

- (1) Not less than \$250 or more than \$500 for each separate offense if the person is the owner of the motor vehicle which is in violation; and
- (2) Not less than \$500 nor more than \$1,000 for each separate offense if the person or business entity is the installer of any sun screening device which does not meet the requirements of this section. The installer shall also reinstall sun protective devices which comply with this section, free of charge, or reimburse the motor vehicle owner for the cost of installing sun protective devices by another installer which comply with this section.

The receipt from the installer in the possession of the person in the motor vehicle at the time of the issuance of the citation shall be prima facie evidence of the identity of the installer. The installer shall issue a certificate to the vehicle owner at the time the sunscreen device is installed certifying that the device complies with law. The certificate shall be stored in the motor vehicle at all times.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Became law on July 13, 2004, without the Governor’s signature, pursuant to Art III, §16, State Constitution.)

ACT 228

H.B. NO. 1860

A Bill for an Act Relating to Child Abuse and Neglect.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-102.5, Hawaii Revised Statutes, is amended to read as follows:

“§235-102.5 Income check-off authorized. (a) Any individual whose state income tax liability for any taxable year is \$2 or more may designate \$2 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department [~~of taxation~~]. In the case of a joint return of a husband and wife having a state income tax liability of \$4 or more, each spouse may designate that \$2 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked.

(b) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be deposited into the school-level minor repairs and maintenance special fund established by section 302A-1504.5, when submitting a state income tax return to the department [~~of taxation~~]. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax return form to allow the designation of contributions to the special fund on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.

(c) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be paid over to the libraries special fund established by section 312-3.6, when submitting a state income tax return to the department [~~of taxation~~]. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.

(d) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$5 or more may designate \$5 of the refund to be paid over as follows:

- (1) One-third to the Hawaii children's trust fund under section 350B-2; and
- (2) Two-thirds to be divided equally among:
 - (A) The domestic violence prevention special fund under the department of health in section 321-1.3;
 - (B) The spouse and child abuse special account under the department of human services in section 346-7.5; and
 - (C) The spouse and child abuse special account under the judiciary in section 601-3.6.

When designated by a taxpayer submitting a state income tax return to the department, the department of budget and finance shall allocate the moneys among the several funds as provided in this subsection. In the case of a joint return of a husband and wife having a state income tax refund of \$10 or more, each spouse may designate that \$5 be paid over as provided in this subsection. The director of taxation shall revise the individual state income tax form to allow the designation of contributions pursuant to this subsection on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.'

SECTION 2. Section 321-1.3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Fees remitted pursuant to section 338-14.5, income tax remittances allocated under section 235-102.5, interest and investment earnings attributable to the moneys in the special fund, and grants, donations, and contributions from private or public sources for the purposes of the fund, shall be deposited into the special fund."

SECTION 3. Section 346-7.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The account shall consist of fees remitted pursuant to sections 338-14.5 and 572-5, income tax remittances allocated under section 235-102.5, interest and investment earnings, grants, donations, and contributions from private or public sources. All realizations of the account shall be subject to the conditions specified in subsection (b)."

SECTION 4. Section 350B-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the Hawaii children’s trust fund as a separate fund of the Hawaii Community Foundation, a Hawaii nonprofit corporation. Moneys received from the state, county, or federal government, income tax remittances allocated under section 235-102.5, and private contributions of cash and other property, and the income and capital gains earned by the fund shall constitute the trust fund assets.”

SECTION 5. Section 601-3.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The account shall consist of fees remitted pursuant to sections 338-14.5 and 572-5, income tax remittances allocated under section 235-102.5, fines collected pursuant to sections [§586-4(d)], 580-10, and 586-11, interest and investment earnings, grants, donations, and contributions from private or public sources. All realizations of the account shall be subject to the conditions specified in subsection (b).”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval, and shall apply to taxable years beginning after December 31, 2004.

(Became law on July 13, 2004, without the Governor’s signature, pursuant to Art III, §16, State Constitution.)

ACT 229

H.B. NO. 2662

A Bill for an Act Relating to Economic Development.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that financial resources are not being made available to new and existing small businesses that seek assistance through private or conventional lenders. This support is important as these small businesses play an integral role in the development of alternative industries, and employment growth.

The legislature further finds that businesses in communities located near military installations may be threatened by military base realignments and closures or capacity reductions.

The purpose of this Act is to assist new and existing small business and those businesses threatened by military base closures and realignments that encounter difficulty when seeking assistance through private or conventional lenders.

SECTION 2. Section 210-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of business, economic development, and tourism may make loans to small business concerns for the financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials, or for the supplying of working capital. The department may also make loans to assist businesses located in communities near military installations to develop infrastructure to minimize the possibility of or assist in the mitigation of the adverse effects of the closure or reduction in capacity of a military installation. The loans may be made in conjunction with loans made by other financial institutions, including the Small Business Administration.

Where the loans made by the department are secured, the security may be subordinated to the loans made by other financial institutions, when the subordination is required to obtain loans from such institutions. The necessity for and the extent of security required in any loan shall be determined by the director of business, economic development, and tourism.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2004-2005, to provide loans to assist new and existing small businesses and those businesses threatened by military base closures and realignments that encounter difficulty when seeking assistance through private or conventional lenders. The sum appropriated shall be expended by the department of business, economic development, and tourism.

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2004.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

Note

1. No bracketed material.

ACT 230

H.B. NO. 2292

A Bill for an Act Relating to Fees for Electronic Filing, Signing, Serving, Certification, and Verification of Court Documents.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to provide funds for the judiciary information management system (JIMS) project. The legislature finds that in light of tremendous advances in technology, court operations can be significantly improved to benefit court users by applying said technological advances.

The legislature further finds that the judiciary is working to address these needs through the JIMS project, and that the fees proposed in this Act will directly assist the JIMS project to work toward that end.

SECTION 2. Section 601-3.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury a special fund to be known as the judiciary computer system special fund. Moneys collected from administrative fees pursuant to section 287-3(a), fees prescribed by supreme court rule for electronic filing, signing, serving, certification, and verification of documents pursuant to section 607-1, and fees pursuant to sections 607-4(b)(10) and 607-5(c)(32) shall be deposited into the fund.”

SECTION 3. Section 607-1, Hawaii Revised Statutes, is amended to read as follows:

“**§607-1 Power of supreme court with respect to costs and fees.** The supreme court shall have power by rule of court, from time to time, to revise, amend,

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add to, or eliminate any of the items of costs and fees provided in this chapter, to prescribe such costs and fees as it deems reasonable in all cases not therein provided for, and to prescribe the amount to be paid in advance to the clerk of any court in any proceeding on account of the costs and fees. Any fees prescribed by supreme court rule for the electronic filing, signing, serving, certification, and verification of documents shall be deposited into the judiciary computer system special fund.”

SECTION 4. Section 607-2, Hawaii Revised Statutes, is amended to read as follows:

“§607-2 Fees to be accounted for. With the exception of [such] fees prescribed by supreme court rule for the electronic filing, signing, serving, certification, and verification of documents, which shall be deposited into the judiciary computer system special fund, and fees [as are] intended to reimburse officers for actual expenditures made by them, all judges’, clerks’, sheriffs’, and deputy sheriffs’ fees provided for in this chapter and accruing from any action pending in any court shall be deposited to the credit of the general fund of the State.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2004; provided that on June 30, 2007, sections 2, 3, and 4 of this Act shall be repealed and sections 601-3.7, 607-1, and 607-2, Hawaii Revised Statutes, are reenacted in the same form in which they read on June 30, 2004.

(Became law on July 13, 2004, without the Governor’s signature, pursuant to Art III, §16, State Constitution.)

ACT 231

H.B. NO. 2294

A Bill for an Act Relating to Fees for Administrative Costs in Traffic Cases.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 601-3.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury a special fund to be known as the judiciary computer system special fund. Moneys collected from administrative fees pursuant to section 287-3(a) and fees pursuant to sections 607-4(b)(10) and 607-5(c)(32) shall be deposited into the fund. One-half of the fees collected pursuant to paragraphs (7), (8), and (9) of section 607-4(b) also shall be deposited into the fund.”

SECTION 2. Section 607-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The fees prescribed by subsection (b) shall be paid to the clerk of the district court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the district court; provided that nothing in subsection (b) shall apply to cases of adults charged with commission of a crime, or minors referred to the district court by the family court; provided further that for the purposes of subsection (b), “judgment” includes an order from which an appeal lies; and provided further

that one-half of the fees [~~prescribed by subsection (b)(10)~~] collected pursuant to paragraphs (7), (8), and (9) of subsection (b) shall be deposited by the clerk of the district court into the judiciary computer system special fund pursuant to section 601-3.7.

- (b) The fees referred to in subsection (a) are:
- (1) Except for petitions for temporary restraining order under section 604-10.5, the fee for which shall be the same as that provided in section 607-5(b)(19), for the institution of each action or proceeding, to include all charges except as provided by paragraphs (2) to (6) \$100
 - (2) Intervention; answer containing one or more cross-claims or counterclaims; third-party complaint, for each such matter \$10
 - (3) Demand for jury trial Fee prescribed by section 607-5
 - (4) Filing of notice of appeal to the supreme court, to be paid in addition to the deposit of appellate court costs \$100
 - (5) Making of a copy; comparing of copy with original Fees prescribed by section 92-21
 - (6) Posting notice; service fees; garnishee fees; mileage charges; or other services actually performed Amounts necessary to cover actual costs or disbursements
 - (7) Administrative costs associated with the processing of traffic citations that involve stopping (when prohibited), standing, or parking [~~\$5~~] \$10 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended
 - (8) Administrative costs associated with the processing of traffic citations which do not involve stopping, standing, or parking [~~\$20~~] \$40 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended
 - (9) Administrative costs associated with the processing of traffic citations issued for violations of a statute or ordinance relating to vehicles or their drivers, or owners, except those as provided by paragraphs (7) and (8) [~~\$15~~] \$30 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended
 - (10) Administrative costs associated with the processing of all civil filings except those brought by the State or any of the various counties and political subdivisions of the State, those commenced by a petition for temporary restraining order under section 604-10.5, and those commenced and conducted in the small claims division of the district court \$20."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2005.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

A Bill for an Act Relating to Kalaupapa Settlement.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. During the 2003 regular session, the legislature adopted house concurrent resolution no. 165 that requested the auditor to conduct an audit of Kalaupapa Settlement operations and expenditures. Many residents of Kalaupapa Settlement flew to Honolulu to testify in support of the concurrent resolution.

Many years ago, Hansen's disease patients were forced into exile at Kalaupapa Settlement to be isolated from society. While the patients are now free to come and go as they please, the State has acknowledged the injustice that occurred and has pledged that the remaining patients may live out their lives at Kalaupapa, their home, and has committed to caring for them.

The legislature finds that there are approximately thirty-nine patients living in Kalaupapa and an estimated forty-nine state workers, all of whom are believed to be necessary because the State operates all of the services in Kalaupapa, including the community store, service station, and the hospital.

The legislature further finds that there are numerous allegations of excessive or inappropriate expenditures and preferential treatment toward the workers. While the workers are needed in Kalaupapa, the legislature found an audit was necessary to ensure that the allocated funds were expended for their true purpose: to care for the remaining patients who have chosen to live the rest of their lives in a town that is their home.

The auditor conducted an audit (*Auditor's Report No. 03-15, Audit of Kalaupapa Settlement Operations and Expenditures*) which confirmed many of the allegations. The auditor found, among other things, that formal rulemaking was limited and the development of policies and procedures for nonmedical needs was ignored. Additionally, patients' concerns were not taken seriously by the department of health or Kalaupapa administration. Further findings show that the department of health did not ensure the competency of the administrator or compliance with job requirements. While the audit found that the patients' medical needs were addressed, poor oversight resulted in the inability to distinguish between patient and nonpatient costs.

The purpose of this Act is to implement the auditor's recommendations to improve the quality of life for the remaining patients of Kalaupapa Settlement.

SECTION 2. Chapter 326, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§326- Annual report. The department of health shall submit a report to the legislature no later than twenty days prior to the convening of each regular session that addresses the following with regard to Kalaupapa Settlement:

- (1) The department's provision of medical and basic living needs of the patients;
- (2) The department's progress toward defining and addressing the nonmedical needs of patients;
- (3) The department's progress toward promoting a positive living environment;
- (4) The department's management of state resources, including benefits given to employees that are not statutorily defined;
- (5) The department's progress toward establishing written policies and procedures for Kalaupapa store;

- (6) The department's progress toward establishing and maintaining a complaint file and adequately addressing complaints;
- (7) The performance of the administrator, including compliance with job duties;
- (8) The department's progress toward adequate accountability of state property; and
- (9) Details and justification of approved employee air travel requests and trail pay."

SECTION 3. Section 326-13, Hawaii Revised Statutes, is amended to read as follows:

"§326-13 Expenses; rules. (a) The department of health shall bear all expenses of travel and other necessary expenses incurred under sections 326-1 to 326-14[;] and may [~~prescribe~~] adopt all rules[~~,-regulations,~~] and forms and perform all acts necessary and proper for carrying out their provisions.

(b) Expenses related to patients shall be tracked separately from nonpatient costs, whenever appropriate and possible."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 233

S.B. NO. 2404

A Bill for an Act Making an Appropriation for Expenses of the 2005 National Association of Counties Meeting in Honolulu.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The city and county of Honolulu is hosting the 2005 National Association of Counties Annual Conference and Exposition from Friday, July 15, to Tuesday, July 19, 2005, at the Hawaii convention center. The city will be assisted by the Hawaii State Association of Counties, an organization comprised of all county councils of the State. The conference is expected to draw between seven thousand five hundred and ten thousand attendees and guests. If eight thousand attendees attend the conference, according to statistics from the Hawaii convention center, the State will benefit because it is estimated that \$24,000,000 will be generated in visitor spending for Hawaii and more than \$2,084,000 will be generated in state tax revenues.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the city and county of Honolulu to host the 2005 National Association of Counties Annual Conference and Exposition, to be matched by the city and county of Honolulu on a dollar-for-dollar basis.

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The sum appropriated shall be expended by the city and county of Honolulu for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2004.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

ACT 234

H.B. NO. 1765

A Bill for an Act Relating to Government Boards, Commissions, and Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 92, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

“§92- Nonattendance of board member; expiration of term. (a) Notwithstanding any law to the contrary, the term of a board member shall expire upon the failure of the member, without valid excuse, to attend three consecutive meetings duly noticed to all members of the board and where the board failed to constitute quorum necessary to transact board business. The chair or acting chair of the board shall determine if the absence of the member is excusable. The expiration of the member's term shall be effective immediately after the third consecutive unattended meeting and unexcused absence. The vacancy shall be filled in the same manner as the original appointment.

(b) This section shall not apply to ex officio members of a board.

(c) Notwithstanding the definition of “board” in section 92-2, this section shall apply only to a state board and shall not apply to a board of any political subdivision of the State or whose authority is strictly advisory.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 235

H.B. NO. 2181

A Bill for an Act Relating to Housing Financing Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 201G-161, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation, with the approval of the governor, may issue from time to time bonds (including refunding bonds to pay, retire, or provide for the retirement of bonds previously issued by the corporation) in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for any of its corporate

purposes[-]; provided however, that bonds may be issued in connection with any program whose primary purpose is to provide housing for active or retired United States military personnel, their families, and other persons authorized by any branch of the United States military to reside in such housing; provided further that the aggregate principal amount of all outstanding bonds issued by the corporation for such military housing projects shall total no more than \$2,000,000,000.”

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 13, 2004, without the Governor’s signature, pursuant to Art III, §16, State Constitution.)

ACT 236

H.B. NO. 2286

A Bill for an Act Relating to the Hawaii Commission for National and Community Service.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the Hawaii commission for national and community service originally was established by Executive Order 94-01. Subsequently, the commission was statutorily created by Act 88, Session Laws of Hawaii 2002. The commission was established to:

- (1) Encourage community service and volunteer participation as a means of community and state problem solving;
- (2) Promote and support voluntary citizen involvement in government and private programs throughout the State;
- (3) Develop a long-term, comprehensive vision and action plan for community service initiatives in Hawaii; and
- (4) Serve as the State’s liaison to national and state organizations that support its mission.

The Hawaii commission for national and community service is administratively attached to the University of Hawaii, office of student affairs.

Federal funds in the amount of \$142,000 have been awarded to the Hawaii commission for national and community service for program year 2003-2004 for the administration of the commission, which also allows the State to receive an additional \$1,000,000 in program and program training funds.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$142,000, or so much thereof as may be necessary for fiscal year 2004-2005 for state matching funds for the administration of the Hawaii commission for national and community service.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2004.

(Became law on July 13, 2004, without the Governor’s signature, pursuant to Art III, §16, State Constitution.)

A Bill for an Act Relating to Early Childhood Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that neurological science has established that a child's cognitive and behavioral potential are largely determined between birth and age five. Unfortunately, poor health, family dysfunction, and troubled communities adversely affect a child's development. However, appropriate nurturing and stimulation for children and support for stressed families is known to ameliorate some of these difficulties when provided in a coordinated, comprehensive, and culturally competent manner. The legislature further finds that school readiness is improved by comprehensive health, family support, and early education services. Objectively, the current system of care is not meeting the needs of many of Hawaii's most fragile, at-risk children.

The legislature further finds that cost-effective programs providing these services need to be supported on a more permanent, institutionalized basis. State funding would also be invaluable in leveraging the significant development work and investments of other sources, such as charitable foundations, nonprofit organizations, and federal agencies.

Hui Imua O Koolauloa is a community-based, collaborative service model that subsidizes services for under-served, high-risk families in a variety of programs, which is a safety net for children and families that do not qualify for other forms of subsidy. The model also fosters interagency collaboration and community leadership.

In addition, the recent work of Economics Nobel Laureate James Heckman of the University of Chicago finds that allocating resources to the birth-to-five age group is the most cost-effective intervention available for the first two decades of life in terms of short- and long-term outcomes for children. Other studies suggest that every \$1 spent on early childhood is \$7 saved in later costs to society.

The purpose of this Act is to appropriate funds for community-based, collaborative, comprehensive early childhood care direct services for children under age five and their families; provided that any such funds shall be used for implementation of community-based, comprehensive direct service delivery systems modeled after the Hui Imua O Koolauloa project, and not for planning, studies, or other strategic functions.

SECTION 2. The department of human services shall establish a pilot project in East Hawaii to provide community-based, collaborative, comprehensive early childhood care direct services for children under age five and their families in the critical need areas as determined by the department.

The department of human services shall submit a report on the pilot project, including its status, outcomes, and findings and recommendations as to whether the pilot project should be continued or made permanent, to the legislature no later than twenty days prior to the convening of the regular session of 2005.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2004-2005 for community-based, collaborative, comprehensive early childhood care direct services for children under age five and their families based on the Hui Imua O Koolauloa model; provided that the funds shall be used for implementation of community-based, comprehensive direct service delivery systems, and not for planning, studies, or other strategic functions.

The sum appropriated shall be expended by the department of human services for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2004.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

ACT 238

S.B. NO. 3153

A Bill for an Act Making an Appropriation for Bioremediation Research.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii encompasses tremendous biological, physical, and social diversity within its small island ecosystems. Historic patterns of land use emphasized large-scale agricultural plantations, extensive rangelands, and forested conservation land. Today, plantation agriculture is declining, and new diversified agriculture, forestry, and urbanization are increasing.

The legislature further finds that sound scientific tools and environmentally sustainable technologies are required for predicting and mitigating any detrimental effects of land use change. Improving the quality of ground and surface water, increasing food safety, and renutrification of soils to accommodate diversified agriculture are some of the priorities in promoting sustainable agriculture. Farmers must be equipped with new and best management practices that are environmentally sound, profitable, and acceptable to the community.

Maui Land & Pineapple Company, Inc., in conjunction with Maui community college and Earth University of Costa Rica, is in the initial stages of creating an educational and agricultural-entrepreneur training program, called Maui Ag Partners. This pilot program will focus on determining the best management practices for soil renutrification on former pineapple lands in West Maui. This project complements the soil renutrification work of the Pacific cooperative studies unit of the college of natural sciences at the University of Hawaii. A joint effort can leverage additional non-state funds and resources to support sustainable agriculture through soil renutrification.

The purpose of this Act is to appropriate funds to support the cooperative efforts for soil renutrification research on former pineapple lands in West Maui.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2004-2005 for a pilot project on soil renutrification research by Maui Ag Partners, coordinated by the Pacific cooperative studies unit of the college of natural sciences and the college of tropical agriculture and human resources at the University of Hawaii; provided that no funds shall be made available under this Act unless matched by non-state funds through Maui Ag Partners for the purpose for which this sum is appropriated.

For the purposes of this Act, bioremediation includes soil renutrification.

The sum appropriated shall be expended by the research corporation of the University of Hawaii for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2004.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

A Bill for an Act Relating to the Practice of Pharmacy.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 461-1, Hawaii Revised Statutes, is amended by amending the definition of "practice of pharmacy" to read as follows:

""Practice of pharmacy" means:

- (1) The interpretation and evaluation of prescription orders; the compounding, dispensing, and labeling of drugs and devices (except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially legend drugs and devices); the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records therefore; the responsibility for advising when necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and devices;
- (2) Performing the following procedures or functions as part of the care provided by and in concurrence with a "health care facility" and "health care service" as defined in section 323D-2, or a "pharmacy" or a licensed physician, or a "managed care plan" as defined in section 432E-1, in accordance with policies, procedures, or protocols developed collaboratively by health professionals, including physicians and surgeons, pharmacists, and registered nurses, and for which a pharmacist has received appropriate training required by these policies, procedures, or protocols:
 - (A) Ordering or performing routine drug therapy related patient assessment procedures;
 - (B) Ordering drug therapy related laboratory tests;
 - (C) Initiating emergency contraception oral drug therapy in accordance with a written collaborative agreement approved by the board, between a licensed physician and a pharmacist who has received appropriate training that includes programs approved by the American Council of Pharmaceutical Education (ACPE), curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
 - (D) Administering drugs orally, topically, by intranasal delivery, or by injection, pursuant to the patient's licensed physician's order, by a pharmacist having appropriate training that includes programs approved by the ACPE, curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
 - (E) Administering immunizations orally, by injection, or by intranasal delivery, to persons eighteen years of age or older, by a pharmacist having appropriate training that includes programs approved by the ACPE, curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
 - (F) As authorized by a licensed physician's written instructions, initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's licensed physician

and related to the condition for which the patient has been seen by the licensed physician; provided that the pharmacist shall issue written notification to the patient's licensed physician or enter the appropriate information in an electronic patient record system shared by the licensed physician, within twenty-four hours;

- (G) Transmitting a valid prescription to another pharmacist for the purpose of filling or dispensing; or
 - (H) Providing consultation, information, or education to patients and health care professionals based on the pharmacist's training and for which no other licensure is required; and
- (3) The offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

ACT 240

S.B. NO. 420

A Bill for an Act Relating to State Finances.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature determines that there is in the compliance resolution fund at least \$10,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the compliance resolution fund to the general fund the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 2. This Act shall take effect on July 1, 2004.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

ACT 241

S.B. NO. 1611

A Bill for an Act Relating to the Deposit Beverage Container Program.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§235- Deposit beverage container deposit exemption. This chapter shall not apply to amounts received as a deposit beverage container deposit collected under part VIII of chapter 342G."

SECTION 2. Section 342G-101, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Redemption rate” means the percentage of deposit beverage containers redeemed over a reporting period. The percentage is calculated by dividing the number of deposit beverage containers redeemed by the number of deposit beverage containers sold and then multiplying that number by one hundred.”

SECTION 3. Section 342G-102, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342G-102]]~~ **Deposit beverage container fee.** (a) Beginning on October 1, 2002, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each polyethylene ~~[terephthalate,] terephthalate,~~ high density polyethylene, or metal deposit beverage container manufactured in or imported into the ~~[State.] state.~~ The fee shall be imposed only once on the same deposit beverage container. The fee shall be 0.5 cents per deposit beverage container.

(b) Beginning on October 1, 2004, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each deposit beverage container manufactured in or imported into the ~~[State.] state.~~ The deposit beverage container fee shall not apply to deposit beverage containers exported for sale outside of the state. The fee shall be imposed only once on the same deposit beverage[-] container. The fee shall be 1 cent per deposit beverage container.

(c) No county shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this chapter.

(d) Beginning January 1, 2005, ~~[the deposit beverage container fees shall be based on a previous calendar quarter's recycling rates as established by rules. The rates shall be as follows, based on the number of containers sold and the number recovered during a previous quarter;]~~ and every August 1 thereafter, the department shall notify deposit beverage distributors in writing of the amount of the deposit beverage container fee. The effective date of changes to the fee amount shall be September 1. The fee shall be based on the redemption rate calculated annually based on the redemption rate information submitted to the department for the previous period of July 1 through June 30. The fee amount shall be as follows:

- (1) If the ~~[recovery]~~ redemption rate is seventy per cent or less: 1 cent per container; and
- (2) If the ~~[recovery]~~ redemption rate is greater than seventy per cent: 1.5 ~~[cent]~~ cents per container.”

SECTION 4. Section 342G-104, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342G-104]]~~ **Deposit into deposit beverage container deposit special fund; use of funds.** (a) There is established in the state treasury the deposit beverage container deposit special fund, into which shall be deposited:

- (1) All revenues generated from the deposit beverage container fee as described under sections 342G-102 and 342G-105;
- (2) All revenues generated from the deposit beverage container deposit as described under sections 342G-105 and 342G-110; and
- (3) All accrued interest from ~~[this]~~ the fund.

(b) Moneys in the deposit beverage container deposit special fund shall be used to reimburse refund values and pay handling fees to redemption centers. The department may also use the money to:

- (1) Fund administrative, audit, and compliance activities associated with collection and payment of the deposits and handling fees of the deposit beverage container ~~[fee and deposit]~~ program;
- (2) Conduct recycling education and demonstration projects;
- (3) Promote recyclable market development activities;
- (4) Support the handling and transportation of the deposit beverage containers to end-markets;
- (5) Hire personnel to oversee the implementation of the deposit beverage container ~~[fee and deposit]~~ program, including permitting and enforcement activities; and
- (6) Fund associated office expenses.

(c) Any funds that accumulate in the deposit beverage container deposit special fund shall be retained in the fund unless determined by the auditor to be in excess, after adjustments to the deposit beverage fee, pursuant to the management and financial audits conducted in accordance with section 342G-107."

SECTION 5. Section 342G-111, Hawaii Revised Statutes, is amended to read as follows:

"[§342G-111] Sales of beverages in deposit beverage containers[;]; distributor report; fee and deposit payment. (a) [Beginning] By January 1, 2005, every deposit beverage distributor who pays a deposit to the department shall charge the dealer or consumer a deposit equal to the refund value for each deposit beverage container sold in Hawaii. The deposit charge may appear as a separate line item on the invoice.

(b) Each dealer shall charge the consumer the deposit beverage container deposit at the point of sale of the beverage, excluding sales for on-premises consumption. The deposit charge may appear as a separate line item on the invoice.

(c) Each deposit beverage distributor shall generate and submit to the department a monthly report on:

- (1) The number of deposit beverage containers, by container size and type, manufactured in or imported into the state; and
- (2) The number of deposit beverage containers, by container size and type, exported and intended for consumption out of the state during the reporting period.

All information contained in the reports, including confidential commercial and financial information, shall be treated as confidential and protected to the extent allowed by state law.

(d) Payment of the deposit beverage container fee and deposits as described in section 342G-110 shall be made monthly based on reports of the deposit beverage distributors under subsection (c).

(e) Beginning January 1, 2005, a deposit beverage distributor who annually imports or manufactures one hundred thousand or fewer deposit beverage containers may submit reports and payments required under subsections (c) and (d) on a semi-annual basis; provided that the semi-annual report and payment period shall end on June 30 and December 31 of each year.

(f) The amount due from a deposit beverage distributor shall be the net number of deposit beverage containers sold multiplied by the sum of the prevailing deposit beverage container fee and the deposit value of 5 cents. Payment shall be made by check or money order payable to the "Department of Health, State of Hawaii". All reports and payments shall be made no later than the fifteenth day of the month following the end of the previous payment period.

(g) The department may allow dealers to charge customers the refund value beginning November 1, 2004; provided that the deposit beverage containers are

clearly marked with the refund value and the deposit beverage distributor has paid the refund value on each container to the department. The dealer shall inform customers that the deposits paid prior to January 1, 2005, shall not be redeemable until January 1, 2005."

SECTION 6. Section 342G-112, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~342G-112~~(1)~~] Deposit beverage container requirements. (a) Except as provided in subsection (b), every deposit beverage container sold in [this State] the state shall clearly indicate the refund value of the container and the word "Hawaii" or the letters "HI". The names or letters representing the names of other states with comparable deposit legislation may also be included in the indication of refund value. [~~Other indications may be required as specified in rules.~~] The refund value on every deposit beverage container shall be clearly, prominently, and indelibly marked by painting, printing, scratch embossing, raised letter embossing, or securely affixed stickers and shall be affixed on the top or side of the container in letters at least one-eighth inch in size.

(b) Subsection (a) does not apply to any type of refillable glass deposit beverage container which has a brand name permanently marked on it and which has the equivalent of a refund value of at least 5 cents which is paid upon receipt of [such] the container by a dealer or deposit beverage distributor.

(c) All deposit beverage containers that do not indicate the Hawaii refund value by January 1, 2005, and are intended for sale shall be sold with stickers as specified in subsection (d).

(d) Stickers that indicate the Hawaii refund value may be purchased from the department from November 1, 2004, to December 31, 2004. Surplus stickers may be redeemed at the department by March 1, 2005. The cost of a sticker shall be equal to the Hawaii refund value."

SECTION 7. Section 342G-113, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) Except as provided in subsection (b), a dealer shall:

- (1) Operate a redemption center by [~~accepting~~] July 1, 2005, and shall accept all types of empty deposit beverage containers with a Hawaii refund value;
- (2) Pay to the redeemer the full refund value for all deposit beverage containers [which] that bear a valid Hawaii refund value; and
- (3) Ensure each deposit beverage container collected is recycled, and forward documentation necessary to support claims for payment as stated in section 342G-119[;] or rules adopted under this part.
- (b) Subsection (a) shall not apply to any dealer:
 - (1) Who is located in a high density population area as defined by the director in rules, and within two miles of a certified redemption center that is operated independently [~~from~~] of a dealer;
 - (2) Who is located in a rural area as defined by rule;
 - (3) Who subcontracts with a certified redemption center [~~for operation~~] to be operated on the dealer's premises;
 - (4) Whose [~~sale~~] sales of deposit beverage containers are only via vending machines;
 - (5) Whose place of business is less than five thousand square feet of interior space;
 - (6) Who can demonstrate physical [~~hardship~~] or financial hardship, or both, based on specific criteria established [~~in rules~~] by rule; or

(7) Who ~~[meet]~~ meets other criteria established by the director. Notwithstanding paragraphs (1) and (2), the director may allow the placement of redemption centers at greater than prescribed distances to accommodate geographical features while ~~[assuring]~~ ensuring adequate consumer convenience.

(c) ~~[All dealers, regardless]~~ Regardless of the square footage of ~~[the]~~ a dealer's place of business, dealers who are not redemption centers shall post a clear and conspicuous sign at ~~[each]~~ the primary public entrance ~~[to]~~ of the dealer's place of business~~[-which]~~ that specifies the name, address, and hours of operation of the closest redemption center locations."

SECTION 8. Section 342G-114, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Redemption centers shall:

- (1) Accept all types of empty deposit beverage containers for which a deposit has been paid;
- (2) Verify that all containers to be redeemed bear a valid Hawaii refund value;
- (3) Pay to the redeemer the full refund value in either cash or a redeemable voucher for all deposit beverage containers, except as provided in section 342G-116;
- ~~[(4) Crush or destroy all deposit beverage containers that are accepted at the time of redemption;~~
- (5) (4) Ensure each deposit beverage container collected is recycled through a contractual agreement with an out-of-state recycler or an in-state recycling facility permitted by the department; provided that this paragraph shall not apply if the redemption center is operated by a recycler permitted by the department; and
- ~~[(6)]~~ (5) Forward the documentation necessary to support claims for payment as stated in section 342G-119."

SECTION 9. Section 342G-115, Hawaii Revised Statutes, is amended to read as follows:

~~"[H]§342G-115[.]~~ **Reverse vending machine requirements.** Reverse vending machines may be used by redemption centers to satisfy the requirements of section ~~[342G-113; provided that the reverse]~~ 342G-113. Reverse vending ~~[machine]~~ machines shall accept any type of empty deposit beverage container and pay out ~~[appropriate refunds via]~~ the full refund value in either cash or a redeemable voucher for those containers that bear a valid Hawaii refund value. If the reverse vending machine is unable to read the barcode to calculate the ~~[Hawaii]~~ refund value, then the department ~~[shall]~~ may specify a delayed date in which the reverse vending machines may be used. The reverse vending machine shall be routinely serviced to ensure proper operation and continuous acceptance of empty deposit beverage containers and payment of the refund value ~~[refunds]~~. ~~[All deposit beverage containers accepted by a reverse vending machine shall either be crushed or destroyed at the point of redemption.]"~~

SECTION 10. Section 342G-117, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) The ~~[State]~~ department shall pay to each certified redemption center a handling fee of not less than the prevailing deposit beverage container fee for each deposit beverage container redeemed by a consumer ~~[which]~~ that is ~~[transported]~~;

- (1) Transported out-of-state; ~~[or received]~~

- (2) Received by an approved in-state company for an approved end use for recycling; or [received]
- (3) Received by a [department-permitted] department-permitted recycling facility.

[(b) Not less than thirty days before paying the handling fees required by this section, the department shall publish a notice statewide in accordance with applicable state law of the recovery rate for the calendar quarter for which the handling fee will be paid. Payments for handling fees shall be made not less than six months after the completion of the calendar quarter to which the payment applies.]

(b) The department shall evaluate the handling fee at least once per year. If the department changes the amount of the handling fee, the department shall publish notice of the change within thirty days of its determination.

(c) The handling fee shall be paid in addition to the refund value of each [such] empty deposit beverage container. Payments for handling fees shall be based on redemption center reports submitted to the department; provided that there is no discrepancy in the reports. The department may choose to pay the handling fee and refund value on the basis of the total weight of the containers received by material type and the average weight of each container type."

SECTION 11. Section 342G-119, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~342G-119] **Redemption center reporting.** The [State] department shall pay certified redemption centers handling fees and refund values as described in [~~§~~]section[~~§~~] 342G-117, based on collection reports submitted by the redemption centers. All redemption centers shall submit to the department[~~§~~] the following information on forms prescribed by the department[~~§~~ information], which information shall include at a minimum:

- (1) The [~~amount and type of containers accepted and rejected;~~] number or weight of deposit beverage containers of each material type accepted at the redemption center for the reporting period;
- (2) The amount of refunds paid out[~~§~~] by material type;
- (3) The [~~amount and~~] number or weight of [each type of] deposit beverage containers of each material type transported out-of-state[~~§~~] or to a permitted recycling facility; and
- (4) Copies of out-of-state transport and weight receipts[~~§~~] or acceptance receipts from permitted recycling facilities. If the redemption center and the recycling facility are the same entity, copies of out-of-state transport and weight receipts, or documentation of end use accepted by the department, shall also be included.

The requests for payment shall be no more frequent than two times per month. [~~Beginning January 1, 2005, each center shall report the previous quarter's information no later than thirty days after the end of that quarter so that the handling rate can be calculated. Failure to timely submit the report shall postpone payment for those containers until they are timely submitted for a subsequent quarter.]"~~

SECTION 12. The following procedures shall be used by the department of health to implement and administer the deposit beverage container program. For purposes of enforcement, the procedures shall be treated as rules of the department of health.

1. General provisions.

- 1.1 Purpose. The purpose of these procedures is to implement chapter 342G, part VIII (deposit beverage container program), to establish minimum standards that provide a mechanism for the economical and

environmentally sound collection of empty deposit beverage containers, foster redemption systems that facilitate recycling of empty deposit beverage containers, and minimize costs without inconveniencing consumers.

- 1.2 Applicability. These procedures are applicable to all persons who are subject to regulation under the deposit beverage container program, including but not limited to beverage manufacturers, distributors, recycling facilities, redemption centers, dealers, and other businesses that sell deposit beverages in deposit beverage containers, unless specifically stated otherwise.

- 1.3 Definitions. The following definitions shall apply whenever the terms are used in these procedures unless the context requires otherwise:

“Applicant” means the owner or duly authorized representative of a redemption center.

“Cancel” means the act of removing the refund value of an empty deposit beverage container as follows:

- (1) Metal empty deposit beverage containers shall be deemed cancelled when such containers can no longer be physically reconstituted or distinguished as individual containers;
- (2) Glass empty deposit beverage containers shall be deemed canceled when such containers have been crushed; and
- (3) Plastic empty deposit beverage containers shall be deemed cancelled when the original form has been so altered as to make reconstitution physically impossible.

“Certification” means an official document issued by the department that identifies a redemption center as being certified by the department.

“Certified” means a redemption center has met the minimum requirements of subsection 4.2.

“Consumer” means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit.

“Department” means the department of health.

“Director” means the director of health.

“Facility” means all contiguous land, including buffer zones and structures, other appurtenances, and improvements on the land, used for the handling of solid waste.

“High density population area” means all United States Postal Service zip code areas on Oahu that:

- (1) Contain three or more dealers each having five thousand or more square feet of interior space; or
- (2) Have a resident population of seventeen thousand five hundred or greater.

“Manufactured” means completely filled bottles, cans, or other deposit beverage containers that are inventoried for sale or distribution.

“Manufacturer” means any person who bottles, cans, or otherwise fills deposit beverage containers for sale to distributors, dealers, or consumers.

“Material” means the physical substance used to manufacture a deposit beverage container including but not limited to plastic, aluminum, metal, or glass.

“Recycling” means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and which is an integral part of a manufacturing

process aimed at producing a marketable product made of post-consumer material.

“Redeem” means to return an empty deposit beverage container that is marked with the Hawaii refund value to a certified redemption center and receive the refund value of the container.

“Refund value” means the amount of the deposit established under the deposit beverage container program.

“Rural area” means a non-high density population area.

“Segregated” means deposit beverage containers divided by material type and consisting of one hundred per cent Hawaii refund value material.

“Segregated rate” means a payment rate set by the department for loads of segregated deposit beverage containers assessed by weight.

1.4 General requirements.

- (a) Penalties. Any person who violates any provision of these procedures shall be fined not more than \$10,000 for each separate offense. Each day that a person is in violation of any provision shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be made through administrative, civil, or criminal actions.
- (b) Enforcement. If the director determines that any person has violated or is violating any provision of these procedures, any rule adopted under section 342G-109, Hawaii Revised Statutes, or any term or condition of a certification or permit issued pursuant to these procedures, the director may do one or more of the following:
 - (1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;
 - (2) Issue an order assessing an administrative penalty for any past or current violation;
 - (3) Require compliance with these procedures immediately or within a specified time; and
 - (4) Commence a civil action in a circuit court of the jurisdiction in which the violation occurred or where the person resides or maintains the person’s principal place of business for appropriate relief, including but not limited to a temporary, preliminary, or permanent injunction and the imposition and collection of civil penalties.
- (c) Any order issued pursuant to subsection 1.4 may include a suspension, modification, or revocation of a certification or permit issued under these procedures and shall state with reasonable specificity the nature of the violation.
- (d) Any order issued under these procedures shall become final unless, not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under these procedures shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Upon request for a hearing, the director shall require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the hearing notice to answer the charges complained of.

- (e) Any hearing conducted under this subsection shall be conducted as a contested case under chapter 91, Hawaii Revised Statutes.
 - (f) In connection with any hearing held pursuant to this subsection, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.
- 2. Deposit beverage distributors.
 - 2.1 Reporting. Deposit beverage distributors shall submit inventory reports to the department using report forms prescribed by the department. The reports shall include but not be limited to information required by section 342G-103, Hawaii Revised Statutes.
- 3. Dealers.
 - 3.1 Additional exemptions. Dealers are exempt from having to operate as a redemption center for empty deposit beverage containers if they:
 - (1) Can demonstrate:
 - (A) Physical hardship, such as the square footage needed to accommodate a redemption center would exceed one per cent of the dealer's retail space; or
 - (B) Such operation would pose a threat to public safety; or
 - (2) Can demonstrate financial hardship including but not limited to providing tax documentation to show that the cost to operate a redemption center will jeopardize the dealer's ability to conduct business.
- 4. Redemption centers.
 - 4.1 Uncertified redemption activities. Uncertified redemption activities shall not be eligible to collect the refund value or handling fee from the department.
 - 4.2 Requirements for certified redemption centers.
 - (a) Redemption centers shall be certified by the department.
 - (b) Redemption centers shall have solid waste permits under chapter 342H, Hawaii Revised Statutes.
 - (c) Certification shall be effective for a period of five years following the date of approval by the department.
 - (d) Applicants shall re-certify the redemption center before expiration of the current certification or the redemption center shall not be eligible for the refund value or handling fee.
 - 4.3 Request for certification.
 - (a) Requests for certification shall be prepared on application forms provided by the department and shall include but not be limited to the following information:
 - (1) The legal name(s), street address, contact person's name and position title, and telephone and fax numbers of the applicant;
 - (2) Annual tax clearances issued by the state department of taxation and the Internal Revenue Service;
 - (3) A certificate of good standing issued by the department of commerce and consumer affairs business registration division, unless the applicant is a sole proprietor;
 - (4) A description of redemption centers including site plans and scope of services;
 - (5) A scope of services on how operations will be monitored to ensure compliance with the law;
 - (6) For redemption centers that issue vouchers for redemption values, an implementation plan submitted to the department for approval; and

- (7) Other information that the director determines to be appropriate.
- (b) Applications for certification shall be submitted to the department for each redemption center site.
- (c) Within thirty days of receiving a complete application, the director shall notify the applicant in writing of the status of the request for certification, including whether it has been approved or denied, and if denied, the reasons for denial.
- (d) The following may serve as a basis for denial of certification:
 - (1) An applicant has an outstanding balance owed to the State;
 - (2) An applicant has an outstanding fine, penalty, or violation within any office of the department;
 - (3) The applicant's history discloses revocation of a recycling center permit or certification within the last two years;
 - (4) The applicant's certification history demonstrates a pattern of operation in conflict with the requirements of chapter 342G, Hawaii Revised Statutes; and
 - (5) A principal officer of the applying company has a criminal conviction of a crime of deceit.
- (e) The department shall evaluate the applicant's response to the department's request for more information and shall notify the applicant in writing of the department's final approval or its intent to deny the application. No application for a permit shall be denied unless the applicant has had an opportunity for a hearing by the department in accordance with chapter 91, Hawaii Revised Statutes.
- (f) The department may, on the department's own motion or the application of any person, suspend or revoke a certification if, after affording the applicant a hearing in accordance with chapter 91, Hawaii Revised Statutes, the department determines that any condition of the certification has been violated, any provision of chapter 342G, Hawaii Revised Statutes, has been violated, or that suspension or revocation of certification is in the public interest.
- (g) No certificate shall be transferred or assigned to any other person, company, or redemption center.
- (h) Applicants shall submit new applications to the department if any changes occur in:
 - (1) The location of a redemption center;
 - (2) The operator of a redemption center; or
 - (3) The operations of a redemption center.
- (i) New applications shall be approved by the department before the redemption center changes its operations or the applicant shall not be eligible for refund value or handling fees.
- (j) Applicants shall notify the department thirty days prior to voluntary termination of certified redemption center activities.
- (k) The certificate shall be kept on file at the redemption center site.
- (l) The certificate shall be the property of the department and shall be returned to the department upon decertification, revocation, invalidation, expiration of certification, or voluntary termination.
- (m) The certificate issued to the applicant of a reverse vending machine shall be kept on file at the main business office of the applicant.

4.4 Posting of certification.

- (a) A certification sign will be provided to redemption centers by the department and shall be prominently displayed where customers approaching the center can view it. A certification sign shall not be displayed at a redemption center that is not certified by the department.
 - (b) The certification sign shall be the property of the department and shall be returned to the department upon decertification, revocation, invalidation, expiration of certification, or voluntary termination.
- 4.5 Load inspection requirements.
 - (a) Redemption center staff shall visually inspect each load of containers for which value is claimed to determine whether any load is eligible for any refund value. Visual inspection shall include but not be limited to the following: Redemption center staff shall remove containers from any bag, box, or receptacle used to deliver the material to the center. In no case shall a certified redemption center pay or claim the refund value for any material not inspected by the redemption center. A load of materials shall be deemed ineligible for any refund value based on the criteria in section 342G-116, Hawaii Revised Statutes.
- 4.6 Redemption by weight. Redemption centers are allowed to redeem deposit beverage containers and pay refund value based on the weight of the containers presented for redemption as follows:
 - (1) The weight shall be measured, recorded, and reported in tons, pounds, and fractions thereof. All weighing in the state shall be done on a scale or other device approved, tested, and sealed in accordance with the measurement standards division of the department of agriculture and applicable rules;
 - (2) Containers must be segregated by material type;
 - (3) Refund values for each type of material shall be posted and paid according to the container per pound rates issued by the department pursuant to subsection 6.1;
 - (4) Redemption centers must inspect loads as required under subsection 4.5; and
 - (5) For loads under fifty containers, consumers may request that redemption value be computed by container rather than by weight.
- 4.7 Obtain payment. The department shall pay handling fees and refund values to certified redemption centers based on the reports submitted by the redemption centers pursuant to subsection 4.8.
- 4.8 Reporting. Redemption centers shall submit reports to the department using report forms prescribed by the department. Report information shall include but not be limited to information stated in chapter 342G, Hawaii Revised Statutes.
- 5. Recycling facilities.
 - 5.1 Load inspection requirements. Recycling facilities may reject loads of deposit beverage containers from redemption centers based on the criteria in section 342G-116, Hawaii Revised Statutes.
 - 5.2 Reporting.
 - (a) Recycling facilities receiving deposit beverage container material from redemption centers shall maintain records regarding empty beverage containers.

- (b) Recycling facilities shall provide documentation of the disposition of deposit beverage container material collected from redemption centers.
 - (c) Documentation shall include information on the end user and shall verify weight and material type.
- 6. Department of health requirements.
 - 6.1 Segregated rate.
 - (a) The method used to determine the segregated rate is to calculate the average number of empty deposit beverage containers per pound by material type. This shall include sampling procedures that consider, at a minimum, the following factors:
 - (1) Weight by separately aggregated size categories of containers (same size) in their original manufactured and unfilled state;
 - (2) Weight by variously mixed aggregated size of containers (different sizes) in their original manufactured and unfilled state;
 - (3) Weight by separately aggregated size categories of containers (same size) in their post-filled state;
 - (4) Weight by variously mixed aggregated size of containers (different sizes) in their post-filled state;
 - (5) Weight by individually mixed aggregated size of container loads in their post-filled state as presented by consumers at recycling centers (selected statewide on a random basis);
 - (6) Volume of sales at wholesale and retail levels in various regions of the state; and
 - (7) The segregated rates for each material type shall incorporate a factor for typical contamination levels so that the refund value and handling fees paid by weight are based on container weights only and not contaminants.
 - (b) The department shall re-evaluate the segregated rate as needed.
 - (c) The department shall publish a segregated rate for each type of deposit beverage container material. These rates shall be used by redemption centers that redeem containers by weight in accordance with subsection 4.6.
 - (d) The rates shall be published prior to the date when deposit beverage containers may first be redeemed and shall be made available to all certified redemption centers and recycling facilities.
 - 6.2 Redemption centers established by the department.
 - (a) If there is no redemption center within two miles of a dealer because a dealer is exempt under subsection 3.1, the respective county and the State shall determine the need for a redemption center in that area. If a redemption center is deemed necessary, the State, with assistance from the county, shall establish the redemption center with funding from the deposit beverage container deposit special fund.
 - (b) The department shall be able to negotiate and pay higher handling fees for redemption centers established pursuant to this section.

SECTION 13. Unless modified hereafter pursuant to chapter 91, Hawaii Revised Statutes, the following definition shall supercede the current definition of

“recycling drop-off facility” as it appears in title 11, chapter 58.1, Hawaii Administrative Rules:

“Recycling drop-off facility” means a structure or site designated for collection and small scale (low technology) segregation of recyclable materials. The staffed or unstaffed site will receive and temporarily store “dropped-off” recyclable materials.

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 16. This Act shall take effect upon its approval; provided that section 12 shall be repealed on March 31, 2005.

(Became law on July 13, 2004, without the Governor’s signature, pursuant to Art III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 242

S.B. NO. 3193

A Bill for an Act Relating to Consumers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. During the 2002 legislative session, the legislature found that affirmative action was necessary to address the high price of gasoline in light of the strong tendency of the structure of the gasoline market in the State to perpetuate high and rising prices and the resulting supra-competitive margins realized by market participants. As a result, the legislature enacted Act 77, Session Laws of Hawaii 2002, which established maximum pre-tax wholesale and retail prices on regular unleaded gasoline to be sold in the State, on a self-serve basis.

Since the passage of Act 77, the legislature has found that the problem of high gasoline prices is principally due to a lack of vigorous competition in the oligopolistic wholesale market, a phenomenon that was acknowledged in the testimony and unsealed documents in Anzai v. Chevron et al., and described in the study of fuel prices and legislative initiatives for the State of Hawaii, prepared by Stillwater Associates for the department of business, economic development, and tourism.

The legislature has also found that there is competition at the retail level where there are approximately three hundred thirty-nine gasoline stations throughout the islands. Further, as stated on page 62 of the Stillwater Associates study, “Today, service stations in Hawaii derive revenues not just from the c-stores (convenience stores) that first replaced the service bays, but from multiple sources, ranging from car rentals to fast food, and discount stores to car washes.” Thus, through the sale of these other profitable products and services, many of these service stations have additional revenue sources to provide a means to compete vigorously for gasoline sales by accepting lower margins on gasoline in order to

attract customers for gasoline, and thereby create opportunities for the sale of these other products and services, and vice-versa.

The legislature's findings on the lack of competition at the wholesale level and the existence of competition at the retail level are also supported by findings of fact made by the United States District Court in Chevron U.S.A., Inc. v. Cayetano, Civil No 97-00933, in which the court found that "Hawaii's gasoline market is an oligopoly at the wholesale level but very competitive at the retail level."

To address the lack of competition at the wholesale level, instead of imposing limits on gasoline prices, the legislature would prefer a structural solution that would yield, foster, or promote a competitive market environment that will benefit consumers. But despite the criticisms levied at Act 77, no one has proffered such a structural solution, with the only "solution" often advanced being a repeal of Act 77 and thereby allowing the maintenance of the status quo.

The legislature finds that maintaining the status quo will continue to work to the detriment of the consumer welfare. Thus, after much deliberation, the legislature finds that there continues to be a need for affirmative legislative action in regards to gasoline prices. But rather than the means chosen and reflected in Act 77, the legislature finds that enhancing the welfare of consumers will be better achieved by fostering the opportunity for prices that reflect and correlate with competitive market conditions. Accordingly, the objective of this Act is to enhance the consumer welfare by fostering the opportunity for prices that reflect and correlate with competitive market conditions.

It should be clearly understood that the objective of this Act is not to guarantee lower gasoline prices. And in this regard, the legislature anticipates that, from time to time, there may indeed be situations where the actual pre-tax wholesale price of gasoline may be less than the maximum pre-tax wholesale prices of gasoline. This phenomenon should be expected, for nothing in this Act compels any manufacturer, wholesaler, or jobber to price up to the maximum pre-tax wholesale prices of gasoline.

The legislature intends to keep a watchful eye on tendencies for the actual pre-tax wholesale price of gasoline to equal the maximum pre-tax wholesale prices of gasoline since such parity could well suggest that additional affirmative legislative action is needed. The possibility of the need for additional affirmative legislative action is not a sign of infirmities in the Act, but, rather, a recognition of the myriad options available to market participants to impair the consumer welfare.

In furtherance of the objective of this Act, the legislature finds that it should be sufficient to limit gasoline prices solely at the wholesale level and to not establish maximum pre-tax retail gasoline prices. The repeal of provisions in Act 77 relating to the setting of maximum pre-tax retail gasoline prices should allow competition to continue at the retail level.

Act 77 provided that the maximum pre-tax wholesale price was to be determined on a weekly basis, based on the average of the spot prices for regular unleaded gasoline for the markets of Los Angeles, San Francisco, and the Pacific Northwest. In furtherance of the objective of this Act, the legislature finds that a more appropriate basis for determining maximum gasoline prices to enhance consumer welfare is the use of the average of the spot prices for regular unleaded gasoline for the markets of New York Harbor, the United States Gulf Coast, and Los Angeles.

The legislature further finds that it is appropriate to set maximum pre-tax wholesale prices for mid-grade and premium gasoline to guard against unreasonable increases in the wholesale price of these grades of gasoline in the wake of the imposition of price limits on regular unleaded gasoline.

The legislature also recognizes that Hawaii, being a chain of islands with different demographics, populations, terminal and storage facilities, and economies

of scale, contains different sub-markets and that it is necessary to identify these sub-markets by zones. Accordingly, the public utilities commission should have the authority to make any necessary adjustments to the maximum pre-tax wholesale gasoline prices in recognition of any unique attributes of these sub-markets that may have an impact on the prices. As a check on the zone price adjustments, however, and to ensure that the market conditions and attributes of the neighbor island markets are confronted and properly addressed, it is appropriate that further study be undertaken by the legislature through a legislative task force.

The purposes of this Act are to:

- (1) Change the baseline for determining maximum pre-tax wholesale gasoline prices by using the average of the spot prices for regular unleaded gasoline for the markets of New York Harbor, the United States Gulf Coast, and Los Angeles;
- (2) Extend maximum pre-tax wholesale price limits to mid-grade and premium gasoline;
- (3) Repeal the maximum pre-tax retail gasoline price;
- (4) Establish zones within the State and authorize the public utilities commission to adjust the maximum pre-tax wholesale gasoline prices in the various zones;
- (5) Establish a legislative task force to investigate the petroleum industry and its operations on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii;
- (6) Extend the effective date for the imposition of the maximum pre-tax wholesale gasoline price limit; and
- (7) Make an appropriation, to be expended by the public utilities commission, to carry out the purposes of chapter 486H and this Act.

SECTION 2. Chapter 486H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§486H-A Restricting supply of petroleum products. The attorney general shall immediately investigate any shortage or condition affecting the supply of any petroleum products or other matters relating to the requirements of this chapter and shall institute all appropriate criminal and civil actions and pursue all legal and equitable remedies that may be available to the State. The attorney general shall submit a report to the legislature regarding any shortage or condition affecting the supply of petroleum products.”

SECTION 3. Section 486H-13, Hawaii Revised Statutes, is amended to read as follows:

“[[§486H-13]] Maximum pre-tax wholesale price for the sale of gasoline; civil actions. (a) Notwithstanding any law to the contrary, no manufacturer, wholesaler, or jobber may sell regular unleaded, mid-grade, or premium gasoline to a dealer retail station, an independent retail station, or to another jobber or wholesaler at a price above the maximum pre-tax wholesale prices established pursuant to subsection (b). The commission shall publish the maximum pre-tax wholesale prices by means that shall include the [Internet] ~~internet~~ website for the State of Hawaii.

(b) On a weekly basis, the commission shall determine the maximum pre-tax wholesale price of regular unleaded, mid-grade, and premium gasoline ~~[for each island]~~ as follows:

- [(1) ~~For the island of Oahu,~~] the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the baseline price for regular unleaded gasoline, plus the location adjustment factor, ~~[and]~~ the mar-

keting margin factor[;], and the zone price adjustment, and for mid-grade and premium gasoline, the applicable mid-grade and premium adjustment factor, such that the maximum pre-tax wholesale gasoline prices reflect and correlate with competitive market conditions.

- (2) ~~For the islands of Kauai, Molokai, Lanai, Maui, and Hawaii, the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the maximum pre-tax wholesale price of regular unleaded gasoline for Oahu, plus the neighbor island wholesale adjustment factor.]~~

(c) The baseline price for regular unleaded gasoline ~~[for Oahu]~~ referred to in subsection (b) shall be determined on a weekly basis[;] and shall be equal to the average of:

- (1) The weekly average of the spot ~~[pipeline]~~ daily price for regular unleaded gasoline for Los Angeles;
- (2) The weekly average of the spot ~~[pipeline]~~ daily price for regular unleaded gasoline for ~~[San Francisco;]~~ New York Harbor; and
- (3) The weekly average of the spot daily price for ~~[the Pacific Northwest;]~~ regular unleaded gasoline for the United States Gulf Coast;

as reported and published by the Oil Price Information Service for the five business days of the preceding week[.]; provided that the commission, in its discretion, may determine a more appropriate baseline or a more appropriate price information reporting service.

(d) The location adjustment factor referred to in subsection (b) shall be \$.04 per gallon ~~[for the first year after July 1, 2004,]~~ or as otherwise determined by the commission and shall thereafter be subject to ~~[annual]~~ adjustment pursuant to section 486H-16(a).

(e) The marketing margin factor referred to in subsection (b) shall be \$.18 per gallon ~~[for the first year after July 1, 2004,]~~ or as otherwise determined by the commission and shall thereafter be subject to ~~[annual]~~ adjustment pursuant to section 486H-16(a).

~~[(f) The neighbor island wholesale adjustment factor shall be the sum of the neighbor island location adjustment factor, plus the neighbor island marketing factor.~~

~~(g) The neighbor island location adjustment factor shall be \$.04 per gallon for the first year after July 1, 2004, and shall thereafter be subject to annual adjustment pursuant to section 486H-16(a).~~

~~(h) The neighbor island marketing factor shall be \$.04 per gallon for the first year after July 1, 2004, and shall thereafter be subject to annual adjustment pursuant to section 486H-16(a).]~~

(f) The mid-grade adjustment factor shall be \$.05 per gallon or as otherwise determined by the commission and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

(g) The premium adjustment factor shall be \$.09 per gallon or as otherwise determined by the commission and shall be thereafter be subject to adjustment pursuant to section 486H-16(a).

(h) For purposes of this chapter, the State shall be divided into the following zones:

- (1) Zone 1 shall include the island of Oahu;
- (2) Zone 2 shall include the island of Kauai;
- (3) Zone 3 shall include the island of Maui, except the district of Hana;
- (4) Zone 4 shall include the district of Hana on the island of Maui;
- (5) Zone 5 shall include the island of Molokai;
- (6) Zone 6 shall include the island of Lanai;

(7) Zone 7 shall include the districts of Puna, south Hilo, north Hilo, and Hamakua on the island of Hawaii; and

(8) Zone 8 shall include the districts of north Kohala, south Kohala, north Kona, south Kona, and Kau on the island of Hawaii.

(i) The commission shall establish zone price adjustments to the maximum pre-tax wholesale regular unleaded, mid-grade, and premium gasoline prices on a zone by zone basis.

(j) Every manufacturer, wholesaler, or jobber, upon the request of the commission, shall furnish to the commission, in the form requested, all documents, data, and information the commission may require to make its determination on zone price adjustments. Any person who refuses or fails to comply with a request for information by the commission shall be subject to a fine of up to \$50,000 per day. Each day a violation continues shall constitute a separate offense.

(k) The maximum pre-tax wholesale gasoline price imposed by this section shall take effect on September 1, 2005, notwithstanding the lack of the adoption of rules pursuant to this section.

~~(i)~~ (l) Any manufacturer, wholesaler, or jobber who knowingly violates any requirement imposed or rule adopted under this section, except for subsection (j), shall be subject to a civil penalty, for each [such] violation, [which penalty shall be] equal to three times the amount of the overcharge[;] or \$250,000, whichever is greater, and shall be liable for the costs of the action[;] and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and attorney's fees. In the case of ongoing violation, the two-year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it deems appropriate. As used in this subsection, "overcharge" means the number of gallons of gasoline sold, times the wholesale price at which the manufacturer or jobber sold regular unleaded, mid-grade, or premium gasoline to a dealer retail station, an independent retail station, or another jobber or wholesaler, less taxes assessed, less the maximum pre-tax wholesale price established pursuant to subsection (b).

~~(j)~~ (m) The commission shall have the power to determine the extent to which a manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted under this section, including the power to compel a manufacturer, [wholesaler,] or jobber to submit documents, data, and information necessary and appropriate for the commission to determine such compliance. The commission may use data collected by the department of business, economic development, and tourism pursuant to chapter 486J, as well as obtain the assistance of that department in determining such compliance.

(n) The commission shall report to the governor and the legislature, in a timely manner, on any significant aberrations, trends, or conditions that may adversely impact the gasoline consumers in the State.

~~(k)~~ (o) The commission shall adopt rules pursuant to chapter 91 as may be necessary to implement this section[;] and section 486H-16."

SECTION 4. Section 486H-14, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 486H-15, Hawaii Revised Statutes, is amended to read as follows:

"[§486H-15] Governor's emergency powers. (a) Notwithstanding any law to the contrary, the governor may suspend, in whole or in part, section 486H-13[, section 486H-14,] or any rule adopted pursuant to [those sections] that

section whenever the governor issues a written determination that strict compliance with [any] the section or a rule will cause a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of Hawaii. In the written determination, the governor shall state the specific provision of the section or rule that strict compliance with will cause a major adverse impact on the economy, public order, or the health, welfare, or safety of the people of the State, along with specific reasons for that determination. The governor shall publish this determination in accordance with section 1-28.5. The suspension shall take effect upon issuance of the written determination by the governor.

(b) Except as provided in subsection (c), the suspension under subsection (a) shall remain in effect until the earlier of:

- (1) The adjournment of the next regular or special session of the legislature; or
- (2) The effective date of any legislative enactment intended to address the major adverse impact;

provided that if the legislature has ~~[enacted]~~ passed legislation to address the major adverse impact, and the governor vetoes the presented legislation, the suspension shall terminate on the date of that veto, and the ~~[pre-tax]~~ maximum pre-tax wholesale ~~[price or the pre-tax maximum retail price]~~ gasoline prices in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after the date of the veto; and provided further that if no action is taken by the legislature during the regular or special session to address the major adverse impact, then the ~~[pre-tax]~~ maximum pre-tax wholesale ~~[price or the pre-tax maximum retail price]~~ gasoline prices in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after adjournment sine die of the regular or special session.

(c) If the written determination is issued while the legislature is in session, the suspension under subsection (a) shall remain in effect until the earlier of:

- (1) The adjournment of that session of the legislature; or
- (2) The effective date of any legislative enactment intended to address the major adverse impact;

provided that if the legislature has ~~[enacted]~~ passed legislation to address the major adverse impact, and the governor vetoes the presented legislation, the suspension shall terminate on the date of that veto, and the ~~[pre-tax]~~ maximum pre-tax wholesale ~~[price or the pre-tax maximum retail price]~~ gasoline prices in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after the date of the veto; and provided further that if no action is taken by the legislature during the regular or special session to address the major adverse impact, then the ~~[pre-tax]~~ maximum pre-tax wholesale ~~[price or the pre-tax maximum retail price]~~ gasoline prices in effect immediately prior to the issuance of the written determination by the governor shall take effect on the day after adjournment sine die of the regular or special session."

SECTION 6. Section 486H-16, Hawaii Revised Statutes, is amended to read as follows:

“[§486H-16] Adjustments. (a) A manufacturer, wholesaler, or jobber may petition the commission to adjust the maximum pre-tax wholesale price of regular unleaded, mid-grade, or premium gasoline in the event of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, ~~[or the neighbor island wholesale adjustment factor.] the mid-grade adjustment factor, the premium adjustment factor, or a zone price adjustment.~~ The petitioner shall bear the burden of proof to establish by clear

and convincing evidence the need for and the amount of any adjustment. The adjustments shall be determined as follows:

- (1) The value of the baseline price shall be equal to the average of:
 - (A) The weekly average of the spot [pipeline] daily price for regular unleaded gasoline for Los Angeles;
 - (B) The weekly average of the spot [pipeline] daily price for regular unleaded gasoline for [San Francisco;] New York Harbor; and
 - (C) The weekly average of the spot daily price for [the Pacific Northwest,] regular unleaded gasoline for the United States Gulf Coast,

as reported and published by the Oil Price Information Service for the five business days of the preceding week; provided that the commission, in its discretion, may determine a more appropriate baseline or a more appropriate price information reporting service;
- (2) The value of the location adjustment factor in effect at the time the petition is filed shall be adjusted to [equal] reflect the average of the actual acquisition cost to non-refiner marketers to obtain gasoline from refiners or importers for sale on the island of Oahu over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agreements, or other similar agreements; provided that the location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Oahu. As used in this paragraph, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pays to a third party for delivery of such gasoline into a terminal located on the island of Oahu;
- (3) The value of the marketing margin factor in effect at the time the petition is filed shall be adjusted by adding to such value the difference between:
 - (A) The average of the difference over the prior twelve-month period between:
 - (i) The dealer tank wagon price for sales for resale[;] for "regular" gasoline; and
 - (ii) The bulk price for sales for resale[;] for "regular" gasoline, for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information; less
 - (B) The average of the difference over the period from 1994 until the most current year between:
 - (i) The dealer tank wagon price for sales for resale[;] for "regular" gasoline; and
 - (ii) The bulk price for sales for resale[;] for "regular" gasoline, for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information;
- ~~(4) The value of the neighbor island location adjustment factor in effect at the time the petition is filed shall be adjusted to equal the actual acquisition cost to non-refiner marketers to obtain gasoline from a refiner or importer for sale on the island of Kauai, Molokai, Lanai,~~

Maui, or Hawaii, over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agreements, or other similar agreements; provided that the neighbor island location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Kauai, Molokai, Lanai, Maui, or Hawaii, from any port on the island of Oahu. As used in this subsection, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer [pays] to a third party for delivery of such gasoline into a terminal located on Kauai, Molokai, Lanai, Maui, or Hawaii; and

- (5) The value of the neighbor island marketing factor in effect at the time the petition is filed shall be adjusted if there are material changes in the cost factors associated with marketing gasoline on the island of Kauai, Molokai, Lanai, Maui, or Hawaii, such as terminaling, storage, or distribution costs;]
- (4) The value of the mid-grade and premium adjustment factors in effect at the time the petition is filed shall be adjusted by any material change in the mid-grade and premium adjustment factor as published by an appropriate price information reporting service; and
- (5) The value of any zone price adjustment in effect at the time the petition is filed shall be adjusted based upon material changes in the operating costs for a zone, such as terminaling, storage, or distribution costs, and other empirical data the commission deems appropriate.

[(b)] A retail station may petition the commission to adjust the maximum pre-tax retail price of gasoline in the event of a change in the maximum pre-tax wholesale price for regular unleaded gasoline, or the value of the retail marketing margin factor. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustment shall be determined as follows:

- (1) The value of the retail marketing margin factor for regular unleaded gasoline established in section 486H-14(c) shall be adjusted upward only if such value is less than the average of the difference over the prior twelve-month period between:
 - (A) The "through retail outlets" price for sales to end users for regular unleaded gasoline; and
 - (B) The dealer tank wagon price, for sales for resale for regular unleaded gasoline, for Petroleum Administration for Defense (PAD) District V,

as reported and published by the Energy Information Administration or its successor in Table 31 "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information.¹

[(c)] (b) If the commission adjusts the maximum pre-tax wholesale [price or the maximum pre-tax retail price of regular unleaded gasoline,] gasoline prices, the commission shall publish its findings and the adjusted prices by means that shall include the [Internet] internet website for the State of Hawaii.

[(d)] In its discretion and without a petition having been filed, the commission may adjust the maximum pre-tax wholesale price or the maximum pre-tax retail price of regular unleaded gasoline if an adjustment is necessary as a result of a change in the value of the baseline price for regular unleaded gasoline, the location adjustment factor, the marketing margin factor, the neighbor island wholesale adjustment factor, or the retail marketing margin factor.

~~(e) Nothing in section 486H-13 or 486H-14 shall be construed to prohibit the filing of a petition during the first year after July 1, 2004.]~~

(c) Regardless of whether a petition has been filed and notwithstanding a determination of the adjustments made pursuant to subsection (a), the commission, in its discretion, may make such other and further adjustments deemed necessary and appropriate to establish maximum pre-tax wholesale gasoline prices that reflect and correlate with competitive market conditions.’’

SECTION 7. (a) There shall be convened a special task force comprised of eight members of the legislature representing districts on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii to investigate the petroleum industry and its operations and impacts on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii. The director of business, economic development, and tourism and the director of transportation or their respective representatives shall serve as ex officio members of the task force.

(b) Four members of the task force shall be appointed by the speaker of the house of representatives and four members shall be appointed by the president of the senate. Of the eight members, the speaker of the house of representatives and the president of the senate shall each select a co-chairperson for the task force.

(c) The duties of the task force are as follows:

- (1) Obtain an inventory of petroleum facilities serving each of the islands of Kauai, Maui, Molokai, Lanai, and Hawaii, including, but not limited to, ships, barges, and other modes of transporting, loading and off-loading facilities, storage facilities, and pipelines and rolling stock for the movement and distribution of petroleum products;
- (2) Meet with persons involved in the petroleum industry on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii, including, but not limited to, shippers, wholesalers, jobbers, retailers, and consumers;
- (3) Determine the special needs and concerns of the petroleum suppliers and consumers on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii;
- (4) Determine what, if any, special barriers to competition exist on the islands of Kauai, Maui, Molokai, Lanai, and Hawaii;
- (5) Review the need for a tax credit program to encourage the development of additional fuel storage terminal facilities on the islands Kauai, Maui, Molokai, Lanai, and Hawaii;
- (6) Consider the need for a Hawaii fuel authority that would own and operate a fuel import terminal, buy gasoline in the world market, and resell the gasoline at retail at cost throughout the State;
- (7) Determine the appropriateness of the delineation of the various zones and the zone price adjustments; and
- (8) Consider any other issues or concerns that it may have relating to the petroleum industry in the State.

(d) The public utilities commission shall provide necessary staff and logistical support to serve the task force.

(e) The task force shall prepare and submit a report with recommendations, including any proposed legislation, to the legislature twenty days before the convening of the regular session of 2005.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2004-2005, to carry out the purposes of chapter 486H and this Act, including the hiring of necessary staff and the retaining of professional consultants, without regard to chapters 76 and 103D for the purposes of this Act. The sum appropriated shall be expended by the public utilities commission.

ACT 242

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 12. This Act shall take effect on July 1, 2004.

(Became law on July 13, 2004, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

Notes

1. No end bracket.
2. Edited pursuant to HRS §23G-16.5.

PROPOSED CONSTITUTIONAL AMENDMENTS

For other proposed constitutional amendment, see Act 60 on page 301 of this volume.

S.B. NO. 2843

A Bill for an Act Proposing an Amendment to Article I of the Constitution of the State of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii to provide that:

- (1) The public has a right of access to registration information regarding persons who have been convicted in the past or who will be convicted in the future of certain crimes against children and certain sexual offenses;
- (2) The legislature shall determine which offenses are subject to this public right of access;
- (3) The legislature shall determine what information constitutes registration information to which the public has a right of access;
- (4) The legislature shall determine the manner of public access to the registration information; and
- (5) The legislature shall determine a period of time and conditions pursuant to which a convicted person may petition for termination of public access.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

**“PUBLIC ACCESS TO INFORMATION CONCERNING PERSONS
CONVICTED OF CERTAIN OFFENSES AGAINST CHILDREN
AND CERTAIN SEXUAL OFFENSES**

Section . The public has a right of access to registration information regarding persons convicted of certain offenses against children and persons convicted of certain sexual offenses. The legislature shall determine which offenses are subject to this provision, what information constitutes registration information to which the public has a right of access, the manner of public access to the registration information and a period of time after which and conditions pursuant to which a convicted person may petition for termination of public access.”

SECTION 3. The question to be printed on the ballot shall be as follows: “Shall the Constitution of the State of Hawaii be amended to provide that the public has a right of access to registration information regarding persons convicted of certain offenses against children and persons convicted of certain sexual offenses, and that the legislature shall determine which offenses are subject to this provision, what information constitutes registration information to which the public has a right of access, the manner of public access to the registration information, and a period of time after which and conditions pursuant to which a convicted person may petition for termination of public access?”

PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 4. New constitutional material is underscored.¹

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note

1. Edited pursuant to HRS §23G-16.5.

S.B. NO. 2846

A Bill for an Act Proposing Amendments to Article I, Section 14, of the Hawaii Constitution.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to article I, section 14, of the Constitution of the State of Hawaii to permit the legislature to pass legislation providing for the inadmissibility of privileged confidential communications between an alleged crime victim and the alleged crime victim's physician, psychologist, counselor, or licensed mental health professional.

SECTION 2. Article I, section 14, of the Constitution of the State of Hawaii is amended to read as follows:

“RIGHTS OF ACCUSED

Section 14. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, or of such other district to which the prosecution may be removed with the consent of the accused; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against the accused[;], provided that the legislature may provide by law for the inadmissibility of privileged confidential communications between an alleged crime victim and the alleged crime victim's physician, psychologist, counselor or licensed mental health professional; to have compulsory process for obtaining witnesses in the accused's favor; and to have the assistance of counsel for the accused's defense. Juries, where the crime charged is serious, shall consist of twelve persons. The State shall provide counsel for an indigent defendant charged with an offense punishable by imprisonment.”

SECTION 3. The question to be printed on the ballot shall be as follows:
“Shall the Constitution of the State of Hawaii be amended to permit the legislature to provide by law for the inadmissibility of privileged confidential communications between an alleged crime victim and the alleged crime victim's physician, psychologist, counselor or licensed mental health professional?”

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

PROPOSED CONSTITUTIONAL AMENDMENTS

S.B. NO. 2851

A Bill for an Act Proposing an Amendment to Article I of the Constitution of the State of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to article I, section 10, of the Constitution of the State of Hawaii to permit prosecutors and the attorney general to initiate felony criminal charges by filing a written information signed by the prosecutor or the attorney general setting forth the charge in accordance with procedures and conditions to be provided by the state legislature.

SECTION 2. Article 1, section 10, of the Constitution of the State of Hawaii is amended to read as follows:

**“INDICTMENT; PRELIMINARY HEARING; INFORMATION;¹
DOUBLE JEOPARDY; SELF-INCRIMINATION**

Section 10. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury or upon a finding of probable cause after a preliminary hearing held as provided by law[;] or upon information in writing signed by a legal prosecuting officer under conditions and in accordance with procedures that the legislature may provide, except in cases arising in the armed forces when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy; nor shall any person be compelled in any criminal case to be a witness against oneself.”

SECTION 3. The question to be printed on the ballot shall be as follows:
“Shall Hawaii’s constitutional provision regarding the initiation of criminal charges be amended to permit criminal charges for felonies to be initiated by a legal prosecuting officer through the filing of a signed, written information setting forth the charge in accordance with procedures and conditions to be provided by the state legislature?”

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note

1. Should be underscored.

**COMMITTEE REPORTS ON BILLS ENACTED
AND ON PROPOSED CONSTITUTIONAL AMENDMENTS**

**TABLES SHOWING EFFECT
OF ACTS**

GENERAL INDEX

**COMMITTEE REPORTS ON BILLS ENACTED
AND ON PROPOSED CONSTITUTIONAL AMENDMENTS
REGULAR SESSION OF 2004**

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
HB0267 ¹	057	2969, 3244	125, 755-04	
HB0680	198	2957, 3258	264, 696-04	91-04
HB0851	123	1027, 1366	597	131-04
HB1043 ¹	053	1106, 1391	693	4-04
HB1113	002	2561	570	
HB1259	162	3106	650-04	27-04
HB1294	055	1349	574	10-04
HB1560	070	3039, 3231	306, 748	
HB1710	138	3020, 3269	45-04, 747-04	80-04
HB1737	014	3068	514-04	
HB1756	129	2989, 3237	120-04, 603-04	79-04
HB1765 ²	234	3002, 3110	644-04	34-04
HB1770	102	2958, 3127	142-04, 543-04	38-04
HB1780	194	3014, 3253	22-04, 705-04	
HB1786	128	2926, 3254	312-04, 680-04	81-04
HB1797 ¹	046	2861, 3279	136-04	
HB1800 ²	041	3085	774-04	1-04
HB1819	036	3191	64-04	
HB1820	124	3122	496-04	85-04
HB1824	127	3089	510-04	
HB1828	084	2919	483-04	17-04
HB1839	189	3019, 3225	284-04, 771-04	
HB1848	195	2978, 3233	203-04, 749-04	133-04
HB1860 ²	228	2904, 3227	188-04, 605-04	20-04
HB1893	217	3022, 3141	239-04, 570-04	
HB1898	037	2982, 3216	236-04, 704-04	
HB1904	197	2960, 3260	4-04, 571-04	155-04
HB1908	147	3003, 3261	112-04, 583-04	135-04
HB1926	021	2944, 3112	546-04	
HB1929	213	3024, 3142	116-04, 578-04	83-04
HB1944	139	3029, 3133	590-04	
HB1980	211	3198	657-04	50-04
HB1987 ²	227	3004, 3113	30-04, 692-04	
HB1991	191	2952, 3114	259-04, 695-04	
HB2002	221	3088	476-04, 773-04	136-04 ³
HB2003 ¹	044	3091	495-04	
HB2004 ²	040	3092	516-04	5-04
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HB2009	223	3185	96-04, 579-04	139-04
HB2013	146	3036, 3108	205-04, 529-04	29-04
HB2020	082	2903, 3115	494-04	28-04
HB2022	208	2901, 3138	422-04, 732-04	18-04
HB2023	207	2983, 3221	287-04, 699-04	39-04
HB2024	004	2920	484-04	
HB2048	099	3030, 3276	7-04, 618-04	
HB2049	098	3201 ⁴	206-04, 520-04	84-04
HB2074	206	3202	11-04, 207-04, 564-04	89-04

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
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HB2098	192	2975, 3116	274-04, 693-04	
HB2136	216	3196	663-04	134-04
HB2137	141	2986, 3134	227-04, 614-04	141-04
HB2139	015	3069	497-04	
HB2140	165	3070	498-04	
HB2142	023	3031, 3117	240-04, 441-04, 700-04	
HB2143	136	3192	517-04, 637-04	86-04
HB2147	163	3071	499-04	
HB2170	112	2953, 3135	592-04	
HB2181 ²	235	3005, 3528	122-04, 733-04	
HB2198	019	2912, 3098	493-04	
HB2206	193	3056	208-04, 701-04	
HB2223	135	2999, 3109	501-04	
HB2250	090	3006, 3262	249-04, 542-04	
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HB2254	061	3121	655-04	35-04
HB2280	042	3058	661-04	3-04
HB2286 ²	236	3025, 3247	107-04, 555-04	
HB2292 ²	230	2908, 3130	413-04, 560-04	
HB2293	078	2909, 3454	176-04, 556-04	
HB2294 ²	231	2938, 3455	368-04, 682-04	
HB2295	077	2910, 3456	371-04, 557-04	
HB2296	071	2911, 3457	305-04, 561-04	
HB2297	161	2971, 3129	597-04	
HB2298	005	2921	485-04	
HB2299	003	2922	486-04	
HB2300	038	3084	446-04, 775-04	2-04
HB2301	202	2939, 3131	672-04	
HB2322	131	3042, 3234	593-04	16-04
HB2337	081	3059	309-04, 563-04	
HB2341	029	3224	37-04, 576-04	
HB2354	066	2962, 3458	630-04	
HB2363	171	2950, 3223	513-04	
HB2375	143	3078	319-04, 539-04	
HB2378	016	3079	642-04	
HB2385	080	2902, 3222	198-04, 537-04	
HB2396	215	3051, 3238	439-04, 770-04	144-04
HB2397	067	3105	209-04, 572-04	
HB2408	118	3107	159-04, 383-04, 716-04	
HB2411	122	3090	389-04, 613-04	137-04
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HB2417	012	3072	502-04	
HB2418	011	3073	503-04	
HB2421	094	3074	504-04	
HB2423	013	3075	505-04	
HB2426	031	3123	506-04	
HB2439	076	3043, 3459	356-04, 549-04	
HB2446	064	2928, 3452	629-04	

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
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HB2472	151	2954, 3119	179-04, 535-04	49-04
HB2498	032	3203	100-04, 575-04	
HB2511	113	3104	587-04	143-04
HB2523	101	2964, 3264	344-04, 582-04	138-04
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HB2547	196	3026, 3143	324-04, 569-04	130-04
HB2558	034	3168	512-04	
HB2569	091	2981, 3217	500-04	
HB2578	111	3037, 3230	598-04	15-04
HB2585	001	2001	1-04	
HB2608 ¹	058	2924, 3229	222-04, 769-04	
HB2630	035	2965, 3219	155-04, 522-04	
HB2645	137	2946, 3248	228-04, 689-04	
HB2662 ²	229	3009, 3265	210-04, 719-04	156-04
HB2667	133	2996, 3144	44-04, 475-04, 745-04	127-04
HB2674	092	3200	673-04	40-04
HB2683	085	3093	200-04	36-04
HB2685	017	3082	201-04	
HB2689	018	3083	202-04	
HB2703	155	3018, 3266	666-04	128-04
HB2739	130	2991, 3272	594-04	41-04
HB2743 ³	043, 052	3087	519-04, 676-04	6-04
HB2749	203	3188	652-04	
HB2789	060	3094	488-04	
HB2796 ²	045	3053, 3086	420-04, 711-04	7-04
HB2798 ³	239	2956, 3278	336-04, 568-04	
HB2814 ²	232	2984, 3270	273-04, 727-04	48-04
HB2840	218	2997, 3136 ⁶	468-04, 585-04	132-04
HB2871	087	3204	77-04, 545-04	
HB2883	159	3010, 3267	167-04, 385-04, 622-04	140-04
SB0017	219	304, 669	1117, 1456	125, 93-04
SB0214 ²	225	2072, 2479, 2851	783-04, 1249-04	117-04
SB0420 ²	240	835	1423	116-04
SB0473	212	544, 779	949, 986-04, 1264-04	60-04
SB0779	179	524, 951	490-04, 1270-04	107-04
SB1238	224	239, 814	930, 1006-04, 1287-04	65-04
SB1239	096	424, 923	991, 1438	110-04
SB1302	086	2480, 2671	1557-04	
SB1318	116	621	860-04, 1293-04	126-04
SB1362	079	391, 2783 ⁸	832-04, 1194-04	
SB1491	154	364, 2525	1038-04 157-04	
SB1611 ²	241	600	1149, 1061-04	92-04
SB2005	022	2002	921-04, 1114-04	
SB2009	072	2538	1018-04	
SB2021	126	2036	802-04, 1195-04	
SB2045	156	2050, 2809	903-04, 1275-04	104-04
SB2063	220	2249, 2829	1001-04, 1217-04	76-04

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
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SB2200	222	2265, 2577	948-04, 1196-04	67-04
SB2210	164	2443, 2661	909-04, 1289-04	154-04
SB2246	170	2158	1142-04	
SB2278	010	2004	1015-04	
SB2294	050	2586	901-04	
SB2355	184	2329, 2686	956-04, 1250-04	119-04
SB2358	119	2428, 2790	1143-04	77-04
SB2377	083	2297, 2581	826-04, 1174-04	43-04
SB2380	125	2430, 2706	912-04, 1247-04	44-04
SB2394	009	2007	1014-04	
SB2396	214	2008, 2825	913-04, 1233-04	102-04
SB2404 ²	233	2124, 2812	929-04, 1232-04	153-04
SB2424	063	2487, 2687	833-04, 1271-04	115-04
SB2425	132	2497, 2767	999-04, 1118-04	68-04
SB2440	187	2106, 2584	793-04, 1181-04	100-04
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SB2474	095	2320, 2802 ⁹	857-04, 1283-04	
SB2529	204	2166	864-04	103-04
SB2538	108	2445, 2771	950-04, 1208-04	70-04
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SB2551	074	2193, 2682	1137-04	147-04
SB2556	068	2195, 2685	1135-04	148-04 ¹⁰
SB2577	054	2387, 2794	934-04, 1284-04	
SB2586	166	2388, 2630	923-04, 1189-04	23-04
SB2589	027	2009, 2565	931-04, 1170-04	
SB2595	209	2340, 2663	897-04, 1231-04	150-04
SB2606	200	2470, 2580	827-04, 1197-04	63-04
SB2647	024	2605	905-04, 1173-04	
SB2671	110	2446, 2773	951-04, 1209-04	71-04
SB2690	158	2377, 2849	920-04, 1278-04	98-04
SB2704	186	2224, 2796	1059-04	51-04
SB2716 ³	226	2558	855-04, 1282-04	69-04
SB2748	152	2213, 2645	874-04, 1245-04	30-04
SB2782	144	2552	947-04, 1279-04	47-04
SB2790	107	2449, 2774	952-04, 1210-04	72-04
SB2791	106	2450, 2775	953-04, 1211-04	73-04
SB2815	020	2511	1086-04	
SB2820	025	2121, 2718	940-04, 1178-04	
SB2834	149	2214, 2648	875-04, 1265-04	55-04
SB2839	093	2345, 2664	798-04, 1266-04	62-04
SB2840	157	2216, 2649	1008-04, 1201-04	31-04
SB2842	059	2607	819-04, 987-04, 1260-04 ¹¹	
SB2844	049	2616	902-04	
SB2861	062	2620	1011-04, 1251-04	32-04
SB2869	188	2410, 2719	789-04, 979-04, 1227-04	
SB2873	181	2198, 2690	957-04, 1261-04	120-04
SB2878	183	2142, 2691	964-04, 1267-04	121-04

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
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SB2882	120	2539	1077-04	
SB2887	104	2392, 2856	924-04, 1292-04	61-04
SB2895	175	2330, 2572	955-04, 1172-04	
SB2897	069	2313, 2805	932-04, 1188-04	
SB2899	088	2379, 2567	942-04, 1113-04	
SB2902	008	2299, 2571	1012-04	
SB2905	026	2543	1112-04	
SB2906	117	2232, 2666	841-04, 1252-04	151-04
SB2908	121	2550	824-04, 1190-04	42-04
SB2909	168	2551	780-04, 974-04, 1214-04	52-04
SB2926	185	2237, 2667	889-04, 1202-04	58-04
SB2929	148	2399, 2743	884-04, 1203-04	26-04
SB2930	153	2400, 2744	885-04, 1269-04	108-04
SB2936	160	2484, 2845	805-04, 1253-04	106-04
SB2948	173	2463, 2730	882-04, 1228-04	24-04
SB2950	028	2380, 2568	922-04, 1171-04	
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SB2968	142	2411, 2799	811-04, 1175-04	75-04
SB2976	065	2094, 2652	873-04, 1204-04	90-04
SB2983	089	2513, 2592	866-04	
SB2990	115	2594	1136-04	
SB2994	114	2518, 2626	1007-04, 1229-04	
SB2995	103	2086, 2854	879-04, 1182-04	95-04
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SB3044	169	2414, 2585	787-04, 1193-04	
SB3049	172	2341, 2670	975-04, 1273-04	101-04
SB3080	201	2132, 2818	919-04, 1281-04	96-04
SB3085	150	2464, 2806	933-04, 1191-04	46-04
SB3086	109	2454, 2779	954-04, 1212-04	74-04
SB3092	145	2326, 2641	965-04, 1185-04	78-04
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SB3113	100	2590	1148-04	33-04
SB3135	073	2466, 2734	1123-04	14-04
SB3148	134	2456, 2781	863-04, 984-04, 1205-04	113-04
SB3153 ²	238	2476, 2642	971-04, 1215-04	112-04
SB3156	105	2156, 2735	1124-04	45-04
SB3162	097	2327, 2643	867-04	111-04
SB3172	007	2352, 2573	1013-04	
SB3175	176	2201, 2698	960-04, 1220-04	125-04
SB3190	199	2600	915-04, 1192-04	
SB3193 ²	242	2429, 2860	859-04, 978-04, 1184-04	158-04
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SB3238 ¹	051	2073, 2537	1004-04, 1040-04	9-04

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
PROPOSED CONSTITUTIONAL AMENDMENTS¹⁴				
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SB2846		2608	1149-04 ¹³	
SB2851		2617	1035-04	

Notes

1. Vetoed bill overridden.
2. Became law without the Governor's signature.
3. See also Senate Floor Amendment 16 and House Floor Amendment 23.
4. See also Senate Floor Amendment 10.
5. Item vetoed; overridden.
6. See also Senate Floor Amendment 9.
7. See also Senate Floor Amendment 15 of 2003.
8. See also Senate Floor Amendment 5.
9. See also Senate Floor Amendment 6.
10. See also Senate Floor Amendment 15 or House Floor Amendment 19.
11. See also House Floor Amendment 16.
12. See also House Floor Amendment 17.
13. See also House Floor Amendment 15.
14. See also HB2789, Act 60 above.

**Twenty-Second State Legislature
2004 Regular Session**

Key: Am = Amended
N = New
R = Repealed
Sp = Special Session

— = Section number
to be assigned in
HRS Supplement

A. SECTIONS OF HAWAII REVISED STATUTES (HRS) AFFECTED

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9-____	N	125	87A-20	R	216
(3 secs, pt ____)			87A-24	Am	216
9-1, 3	Am	125	87A-35, 36	Am	184
11-____	N	57	88-____	N	179
(6 secs)			(22 secs, pt ____)		
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11-2.5 to 2.7	R	57	88-____	N	182
11-5	Am	57	88-____	N	183
11-51 to 54	Am	202	88-8	Am	180
11-193	Am	57	88-21	Am	182
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		164	54.5, 55, 73		
26-14.6	Am	44	88-74	Am	177
26-35	Am	16			179
26H-4	Am	209	88-82, 83, 85, 85.5,	Am	179
28-8.3	Am	57	96		
		58	88-103.5	Am	10
28-15	Am	43	88-105, 122 to 127	Am	181
29-25	Am	147	88-132.5, 134 to 139	Am	179
36-27	Am	93	88-211, 212, 218, 219	Am	176
		101	88-251, 271, 273, 281,	Am	179
36-30	Am	101	283, 285, 286		
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		216	88F-2, 12	Am	178
36-36	Am	51	89-9	Am	10
		216	89-10.6	Am	51
36-41	Am	98	89-11	Am	10
37-41.5, 74	Am	51	89-20	Am	87
38-3	Am	204	91-14	Am	202
39A-32, 72, 112, 152,	Am	216	92-____	N	234
192			92-28	Am	116
39A-256	Am	10	92F-12, 14	Am	92
40-1, 4, 6	Am	58	101-10, 32, 34, 52	Am	202
40-91	Am	202	102-2	Am	201
41D-2	Am	216	103-8.5	Am	101
			103-10	Am	203
			103-53	Am	216
			103D-203, 304, 310,	Am	216
			702		
			107-11	Am	43
			115-____	N	169
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46-143	Am	155			
47-46	Am	202			
53-6	Am	202			
76-16	Am	128			
78-31	Am	194			

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
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155-11	Am	162	110.91		
157-33	Am	20	235-114	Am	123
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171-99	Am	187	237-42	Am	123
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